

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

**IN RE: VALSARTAN PRODUCTS
LIABILITY LITIGATION**

CIVIL ACTION NUMBER:

19-md-02875-RBK-JS

**TELEPHONIC
STATUS CONFERENCE**

Mitchell H. Cohen Building & U.S. Courthouse
4th & Cooper Streets
Camden, New Jersey 08101
January 27, 2021
Commencing at 10:00 a.m.

B E F O R E:

**THE HONORABLE ROBERT B. KUGHER,
UNITED STATES DISTRICT JUDGE
SPECIAL MASTER THE HONORABLE THOMAS I.
VANASKIE**

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1 (PROCEEDINGS held in open court before The Honorable Robert B.
2 Kugler, United States District Judge, and Special Master The
3 Honorable Thomas I. Vanaskie, at 10:00 a.m.)

4 JUDGE VANASKIE: All right. I think we should get
5 started now. I would ask the attorneys who are not going to be
6 speaking during the course of this conference to put their
7 phones on mute. I'll also ask at this time for counsel who are
8 -- who will be speaking during this conference call to enter
9 their appearance now. And as our court reporter said, I'd
10 remind you to identify yourself when you speak.

11 Who do we have entering an appearance on behalf of the
12 plaintiffs today?

13 MR. SLATER: Good morning, Your Honor. Adam Slater on
14 behalf of the plaintiffs.

15 MR. HONIK: Good morning, Your Honor. Ruben Honik for
16 plaintiffs.

17 MR. NIGH: Good morning, Your Honor. Daniel Nigh for
18 plaintiffs.

19 JUDGE VANASKIE: All right.

20 MS. WHITELEY: Good morning, Your Honor. Conlee
21 Whiteley on behalf of plaintiff.

22 JUDGE VANASKIE: All right.

23 MR. DUNN: Good morning, Your Honor. Tom Dunn on
24 behalf of plaintiff.

25 JUDGE VANASKIE: Very well. I'm going to say that's

1 the slate for the plaintiffs thus far.

2 And who will be speaking on behalf of defendants
3 today?

4 MR. GOLDBERG: Good morning, Your Honor. This is Seth
5 Goldberg from Duane, Morris on behalf of the ZHP parties and
6 the defendants.

7 MS. COHEN: Good morning, Your Honor. This is Lori
8 Cohen with the law firm of Greenberg, Traurig on behalf of the
9 Teva defendants as well as the defense leadership group.

10 JUDGE VANASKIE: Very well.

11 MS. LOCKARD: And this is Victoria -- I'm sorry,
12 Victoria Lockard.

13 JUDGE VANASKIE: I'm sorry.

14 MS. LOCKARD: Sure. Victoria Lockard from Greenberg,
15 Traurig as well on behalf of Teva and the defense leadership.

16 MR. TRISCHLER: Clem Trischler, Your Honor, good
17 morning, for Mylan Pharmaceuticals and the defense group.

18 JUDGE VANASKIE: Good morning.

19 MR. GEOPPINGER: Good morning, Your Honor. Jeff
20 Geoppinger for the wholesaler defendants and AmerisourceBergen.

21 JUDGE VANASKIE: All right. Very well.

22 MS. JOHNSTON: And good morning, Your Honor. Sarah
23 Johnston on behalf of the retailer pharmacy defendants, CVS
24 Pharmacy, Inc., and Rite Aid Corporation.

25 JUDGE VANASKIE: All right. Thank you all very much.

1 And what I propose to do today is to proceed through the agenda
2 as was submitted to me in the letter I received from defense
3 counsel, Item Number -- it's Docket Number -- Document Number
4 786 from Lori Cohen filed last night. And so we'll start with
5 -- we'll proceed in order with the exception of Item Number 5
6 which I'll defer to the end of our call, and that will be
7 covered with the call with Judge Kugler.

8 So the first item is the parties' agreement on
9 bellwether pool selection and proposed order. Where does that
10 stand right now? And who will be addressing that for the
11 defendants?

12 MS. LOCKARD: Your Honor, Victoria Lockard from
13 Greenberg, Traurig.

14 I believe this is in response to the instruction from
15 Judge Kugler that the parties meet and confer over the
16 bellwether process and come up with a proposal for Judge Kugler
17 to consider with respect to selection of that trial pool. And
18 the parties met and conferred and we did come up with a process
19 for that and both sides have selected proposed picks which gave
20 us a total number of about 28 potential bellwether pool
21 plaintiffs on the personal injury side. And it's -- you know,
22 I think at this point we just need to get that process
23 committed to an order, which we're currently negotiating over.
24 There are a couple of terms that the parties still need to work
25 out. And so I hope that we can address those with Judge

1 Kugler. I think those were his issues from the initial
2 conference when we discussed it.

3 JUDGE VANASKIE: Okay, great.

4 Anything from the plaintiffs on that issue?

5 MR. NIGH: No, Your Honor. I agree.

6 THE COURT REPORTER: Excuse me. Was that Mr. Slater?

7 MR. NIGH: Daniel Nigh. Sorry.

8 THE COURT REPORTER. Thank you.

9 JUDGE VANASKIE: Thanks, Camille. Sorry about that.

10 Item Number 2, state coordination order, is that also
11 a matter for Judge Kugler? And who will be speaking on behalf
12 of the defense group on this point?

13 MR. GOLDBERG: Your Honor, this is Seth Goldberg and
14 I'll be speaking on that. And it likely will be an issue for
15 Judge Kugler.

16 The issue's not ripe yet. We did want to bring it to
17 the Court's attention that we have provided plaintiffs with a
18 proposed joint coordination order that will -- that would
19 coordinate discovery between the MDL and any state court
20 actions, and there are a number out there that have claims that
21 mirror the claims in the MDL, and we would just like to be able
22 to ensure that the discovery in the MDL takes the lead and that
23 that's what's envisioned by the joint coordination order that
24 we propose.

25 So we sent it to plaintiffs a few weeks ago and we'll

1 meet and confer on that and raise it with the Court hopefully
2 at the next conference.

3 JUDGE VANASKIE: Okay. Plaintiffs?

4 MR. SLATER: Hello, Your Honor. Adam Slater for the
5 plaintiffs.

6 Yes, this is clearly not something that's ripe. We've
7 looked at this proposal. I'm fine with whoever addresses it,
8 whether it's Your Honor or Judge Kugler. I certainly take --
9 you know, I'm not going to take a position on that. I'm fine
10 with however it's handle.

11 You know, one of the things that Your Honor should be
12 aware of, as far as I know, I have not been made aware of any
13 state court case that's actually advancing towards discovery.
14 All of the state court cases in New Jersey, which I think there
15 might be ten to 12 or ten to 15, are stayed, administratively
16 stayed, essentially, and nothing's happening in those cases to
17 allow the MDL to go ahead and move forward. I'm not aware of
18 anything else happening in any other courts.

19 So there's certainly a question about the need for
20 this and then there's certainly some provisions that we're
21 going to have to discuss with the defense and potentially with
22 the Court because there's issues that are probably much more
23 sensitive for the plaintiffs than the defense, and there's also
24 questions about whether or to what extent certain things can be
25 imposed on a state litigation.

1 So those are just a few of the overlaying issues. But
2 since I think both sides agree this is not nearly ripe, you
3 know, I think it's just something we're informing the Court of
4 the potential issue that the defense wishes to raise.

5 JUDGE VANASKIE: All right. Very well. I think
6 there's no need for further discussion at this time.

7 Do you want to say anything, Seth?

8 MR. GOLDBERG: No. I agree with Mr. Slater, Your
9 Honor.

10 JUDGE VANASKIE: All right. Very well.

11 Item Number 3, the schedule and plan for ongoing
12 mid-month teleconferences. And, Seth, I just wanted to
13 understand your position on this. You're suggesting that we
14 have a mid-month conference but it be only with lead counsel,
15 with leadership counsel?

16 MR. GOLDBERG: Your Honor, this is Seth Goldberg. I'm
17 going to defer to Ms. Cohen to raise this issue with the Court.

18 JUDGE VANASKIE: Okay.

19 MS. COHEN: Good morning, Judge. This is Lori Cohen
20 again on behalf of the defense and the leadership group as well
21 as the Teva defendants.

22 I think that's right, Judge, that this is, you know, a
23 pretty straightforward issue, that in the original CMO2, this
24 was, you know, entered long ago, it was described as a
25 telephone conference, excuse me, with the Magistrate, Judge

1 Schneider, to go with the leadership counsel. And, again, it's
2 not -- certainly not meant to exclude anybody but I think
3 basically what's evolved over time is that these mid-month, you
4 know, gatherings have turned into like a second CMC. There's a
5 lot of resources expended and a lot of time.

6 So I think, on behalf of the defense, we're thinking
7 it would be more efficient, especially as we get to know you
8 and spend more time with you, to make it more limited in terms
9 of the attendees. And so that's what we were proposing, as we
10 said in our letter, consistent with the original CMO.

11 Also related to that, we were thinking on the defense,
12 again, subject to what you think, is that perhaps we can try to
13 do these as Zoom calls, if that was something that you were
14 interested in, again, just in the spirit of trying to get to
15 know you better and spending more time with you face-to-face.
16 I know, of course, we had the opportunity to do that with Judge
17 Schneider early on and we haven't had a chance to do it with
18 you. So that would be another thought we had related to that.

19 And then the third sort of aspect which relates to
20 this I raised last night to Mr. Slater in an email that I know
21 that, again, over time things have evolved such as there are a
22 lot of communications that go between Mr. Slater and
23 Mr. Goldberg with Judge Schneider, and now with you, just the
24 two of them, we proposed last night that at least the
25 leadership group should be copied on these communications.

1 And, again, there's only five of us on behalf of the defense
2 side, it's Mr. Goldberg, Mr. Trischler, myself, Mr. Geoppinger
3 and Ms. Johnston, on behalf of the wholesalers and the
4 retailers. So we were thinking that in communication, though
5 not to expand your time or cause inefficiencies, but we really
6 would prefer if we could all just be copied on those emails,
7 and in the spirit of, again, getting to know you and, again,
8 there's a lot of different interests at stake here.

9 So those are the three components of this request that
10 we, indeed, go -- go to sort of the leadership group attending
11 the mid-month conferences; number two, that we consider
12 potentially doing Zoom or video calls; and number three, that
13 we get away from the pure one-on-one emails and, again, just
14 have the defense leadership group and if the plaintiffs want to
15 have their leadership group included, that we expand those
16 emails so that it's not coming to just one person, especially
17 in a time of extreme busyness, we don't want something to come
18 in, have Mr. Goldberg be out of pocket and the rest of us not
19 see it quickly.

20 JUDGE VANASKIE: That's understandable. And so you
21 understand, I "Reply All".

22 MS. COHEN: Good. Great.

23 JUDGE VANASKIE: So if the email did not include all
24 the leadership counsel, that's why you wouldn't have received a
25 response. So I would suggest any email communication to me

1 include all leadership counsel so everybody's aware of what's
2 going on.

3 MS. COHEN: Thank you, Your Honor. That's exactly
4 what we would like, too. So we appreciate that.

5 JUDGE VANASKIE: All right. Who wants to address this
6 issue for the plaintiffs?

7 MR. SLATER: This is Adam Slater, again, Your Honor.
8 I'll take the issues one at a time.

9 The first issue with having lead counsel on the
10 mid-month calls as opposed to all counsel, that's fine with the
11 plaintiffs. And just so Your Honor understands the background,
12 that's always how it was done but what happened was I believe,
13 if my recollection is correct, the defense advised Judge
14 Schneider that since certain issues affected defendants who
15 were in this sprawling litigation, those defendants were
16 demanding or requesting the right to be on those calls, too.
17 So Judge Schneider opened it up to them. It was not something
18 the plaintiffs, you know, encouraged, and we think that if lead
19 counsel's on, we should still be able to do all the business
20 necessary. You know, we just want to make sure that we can
21 continue to use these mid-month conferences substantively to
22 keep addressing issues because there's so much that comes up,
23 if we have to only address significant issues once a month, the
24 litigation will bog down. But I'm not hearing that, so that's
25 fine.

1 As far as who gets copied on emails to Your Honor, you
2 know, the way that we function and we have functioned in the
3 past was these emails are to you in our capacity as liaison
4 counsel. And Judge Schneider actually recently, and a few
5 times in the litigation, has had to advise other counsel that's
6 not liaison counsel not to be emailing him on these, you know,
7 private emails that are off ECF because that's not what that
8 process was made for and he was getting inundated. People were
9 sending emails from all reaches of the defense group and he
10 said you just -- I can't have that.

11 If there are certain communications that are more
12 formal, obviously, we -- we address or copy the other lawyers.
13 But we would like to be able to still have the ability, on a
14 streamlined basis, to have just liaison counsel communicate
15 with Your Honor on issues that can be addressed much more
16 informally because, as you can imagine, if we copy everybody,
17 then everybody's going to want to have input and say something,
18 and the ability of us to move in an off-the-record, prompt way
19 will become -- it'll get bogged down and it won't work the way
20 that it was really envisioned, that as liaison counsel, those
21 are supposed to be the only lawyers that are communicating
22 directly with the Court.

23 So I just would like to have the ability to have
24 communications where it's just myself and Mr. Goldberg because
25 then we can handle things with Your Honor that don't require a

1 lot of other people to be involved on a much quicker,
2 streamlined basis.

3 JUDGE VANASKIE: Adam, how many other people are we
4 talking about?

5 MR. SLATER: I think on the defense side, they're
6 talking about at least five other people; and on the
7 plaintiffs' side, we have four co-leads.

8 JUDGE VANASKIE: Okay.

9 MS. COHEN: And, Your Honor, I'm happy to --

10 MR. GOLDBERG: Your Honor, this is -- Your Honor, this
11 is Seth Goldberg, if I may.

12 There's never been a point where Judge Schneider asked
13 that other counsel, especially the Executive Committee counsel,
14 not be copied on email that are coming from liaison counsel.
15 The purpose was to keep Judge Schneider and Your Honor from
16 getting hit with email coming from all sides and having those
17 email go through liaison counsel. But there's never an email
18 that Mr. Slater and I had with Judge Schneider or that we'll
19 have with you that I'm not sharing with Executive Committee and
20 other defense counsel. And what we're proposing is actually to
21 enhance the efficiency, especially given that we're headed into
22 a period of very busy depositions, that it's a simple copy the
23 Executive Committees on both sides. Plaintiffs have one email
24 address, they have a distribution list for their Executive
25 Committee, so we're really talking about adding four emails,

1 Mr. Trischler, Ms. Cohen, Mr. Geoppinger and Ms. Johnston, to
2 the emails that Adam and I will have in our capacity as liaison
3 counsel. So we don't really see why there's --

4 MR. SLATER: Your Honor --

5 MR. GOLDBERG: -- why there's a burden here.

6 MR. SLATER: Your Honor, it's Adam Slater.

7 I was never suggesting that we don't communicate with
8 our group on our end. I can assure you that when I'd
9 communicate with Judge Schneider in the past and when I would
10 communicate with Your Honor, I'm not running rogue and doing my
11 own agenda. Lead counsel on our side is aware of what's
12 happening and I assume Mr. Goldberg is doing the same thing.
13 For example, Mr. Goldberg's talking about this one email
14 address, that's our Executive Committee, that's another 12
15 lawyers. I think we have 12 or so attorneys on our Executive
16 Committee.

17 So, you know, I have no problems, if there's a major
18 issue and people need to know about it, that's fine. I just
19 want to be able to retain the ability to have efficient, direct
20 communications just with liaison counsel with Your Honor so
21 that easy things can just be addressed, like, hey, can we just
22 have an extension on this, we've agreed on it, is that okay; or
23 we have a problem here, can we get on the phone and talk to you
24 about something. Because if everyone's copied, everyone's
25 going to want to be on the call, we're not going to be able to

1 work in an informal, off-record way, where my experience has
2 been a lot of things get done when there's just, you know, two
3 people on the call representing all interests as opposed to
4 eight or ten people. It's just much easier to get business
5 done in a more efficient way. That's all I'm trying to do is
6 retain that as a way to resolve things and keep the litigation
7 moving.

8 MS. COHEN: And, Your Honor, this is Lori Cohen again.
9 I just wanted to add a few thoughts, since I raised it.

10 I'm not trying to be a rabble-rouser here or create
11 any inefficiencies. To the contrary, we are going to be moving
12 into a very busy phase. I use the example of the email that
13 Mr. Slater sent on Tuesday, so I guess that was yesterday,
14 about a Motion to Amend the Master Complaint, I mean that was
15 something that we felt like it would have been easy to copy the
16 other four members of the defense Executive Committee, and we
17 would have liked to have been in the mix on getting that email.
18 If Mr. Slater wants to say to Mr. Goldberg, hey, let's have a
19 call, he doesn't have to copy all of us; but an email like
20 that, why shouldn't we be involved in that, if that was the
21 original intent of the Executive Committee. And, also, you
22 know, frankly, we want to get to know you better, we want to
23 have a voice in this, we want to be involved as the Executive
24 Committee. And, again, I think when the liaison attorneys were
25 selected, it was more to help processes and so forth and we're

1 here to work as a team and represent the different interests.

2 So, again, I would just respectfully ask that the four
3 other members be included on these emails, and I don't think it
4 should be much burden to Mr. Slater and his team. We know how
5 not to inundate you as well. We certainly are not going to
6 have five of us responding. We will coordinate our responses.

7 JUDGE VANASKIE: You know, I like transparency and I
8 don't think it's a burden, Adam, to include the Executive
9 Committee. If I have the titles wrong, please understand I'm
10 talking about the additional four or five attorneys on the
11 defense side being copied on communications to me that come
12 from Seth, for example, because I was -- I was a bit concerned
13 when I -- and it's not only this one that came in on Tuesday, I
14 got one in over the weekend that I responded to, and I am
15 concerned that I'm responding -- I am responding to "All", but
16 it concerns me that it's not at least the leadership group.

17 So, you know, let's go back to the process of copying
18 the leadership group, the four or five attorneys, on the
19 defense side. On the plaintiffs' side, you all decide among
20 yourselves who should be copied on the communications to me. I
21 know you're sending them off to your group so they're aware of
22 things. If you don't want to put them on the email to me, I
23 understand that; but if Seth emails me, I would expect that he
24 would include the plaintiff leadership group as recipients of
25 the emails as well so that when I "Reply All," everybody knows

1 what's going on and don't -- and you don't have to worry about
2 is Adam unavailable to forward that email on. And I don't know
3 what your internal processes are. You might have some internal
4 process in place that makes that more automatic. But this way
5 it is more transparent. I don't view it as creating an undue
6 burden. And if all of a sudden I'm getting inundated with
7 emails when somebody sends a simple request about extension of
8 time or similar -- a similar matter, well, then we'll have to
9 rethink this.

10 So let's at least put everybody on the same wavelength
11 in terms of the communications to and from me with respect to
12 these types of procedural matters. So I would ask going
13 forward that we do that. I don't think that imposes an undue
14 burden and I'm confident it's not going to result in my being
15 inundated. We didn't open up the floodgates to say anybody can
16 email me at any time. We still want to work through Adam and
17 Seth on these communications; it's just who's going to hear
18 back from me when I'm replying, as I did this past weekend and
19 this past week, to email requests that required prompt action.
20 Both of them were dealing with deadlines and you wanted to
21 avoid the work, and I applaud you for reaching out to me and
22 I'll always try to make sure I reply to you promptly. But this
23 way everybody will know what's going on.

24 So let's, moving forward, implement that as part of
25 your processes. I know it's a bit of a pain, Adam, to now have

1 to add in, but you can do it by way of a list server or
2 something.

3 MR. SLATER: Understood, Judge.

4 JUDGE VANASKIE: Okay. Good.

5 In terms of the attendance at these mid-month calls, I
6 would like to just have leadership counsel on, unless I get
7 objections, you know -- when I joined this call a couple
8 minutes early, there were over 30 persons on the call already.
9 If there are counsel who want to be included who have a problem
10 with this, I need to know that. And I suggest you work
11 through, on the plaintiffs' side, you work through Adam, and on
12 the defense side, you work through Seth, letting them know
13 whether you're in agreement with this approach. I have no
14 problem with it. We can still address issues, we can still
15 resolve issues. I think these twice-monthly calls are very
16 important to keep the case moving forward.

17 In my prior Special Master experience, at the outset I
18 was conducting weekly conference calls because they were
19 fighting over everything and we kept the matter moving. I'm
20 not suggesting weekly calls here, but I do think they are
21 important. So I'm comfortable going forward, if it's just the
22 leadership group, you'll have to let me know who gets copied on
23 those notices for it, for those calls; but I'd be happy to
24 restrict it to that, as long as there's not, you know, a
25 significant objection on either side of the V for this matter.

1 And then on the question of the format of the call,
2 conducting it by Zoom, if we limit the size of the group, I
3 have no problem conducting this by Zoom. I agree, it's an
4 opportunity to try to get to know each other a little bit -- a
5 little bit better. I've -- I've been using Zoom quite
6 extensively and so would have no problem with that.

7 Adam, I didn't get your views on this so maybe I
8 should, before I weigh in too much, get your view.

9 MR. SLATER: You know, Judge, I didn't comment on it
10 because I felt like whatever you preferred was fine. You know,
11 that's just going to mean that we're going to have to brush our
12 hair at home, I guess, on Wednesdays every couple weeks now.

13 JUDGE VANASKIE: You're going to have to look
14 presentable, that's for sure.

15 But if that's all right with everyone, I'd like to try
16 it by Zoom and see how it goes because I think it is a way of
17 at least -- I think it's a better way to communicate because
18 you can see people as well. And --

19 MS. COHEN: And, Judge, this is Lori Cohen again.
20 We're happy to sort of take the lead on trying to coordinate
21 that, since I raised this issue. We'll even send Mr. Slater a
22 hair brush if it helps.

23 You know, on the issue of who attends these, as well,
24 certainly on the defense side, if anyone has a special issue or
25 if Mr. Slater says to us, I really need to, you know, address

1 an issue with X person, then we certainly can make exceptions
2 and invite, you know, more people. I think we were just
3 thinking sort of as a general rule to try and keep it more
4 limited; and also for the advantage of having Zoom, having it
5 limited would be helpful.

6 JUDGE VANASKIE: Yes, I agree. So I think we can
7 proceed on that basis, that we'll have these mid-month -- the
8 mid-month calls will be to a limited group and conducted by
9 Zoom and we'll see how it goes. Obviously, if that poses to be
10 a problem, we can be flexible.

11 MS. COHEN: Thank you, Your Honor.

12 JUDGE VANASKIE: Anything else on Item Number 3 on the
13 agenda?

14 (No response.)

15 JUDGE VANASKIE: Item Number 4, the proposed
16 litigation overview, did you want to be heard on this, Mr.
17 Slater?

18 MR. SLATER: Yes, Your Honor.

19 Frankly, we don't, from the plaintiffs' perspective,
20 think there's absolutely any need to submit yet another brief
21 or analysis. We're all very busy, we have plenty going on.
22 I'm not really -- and I certainly don't think -- Your Honor's
23 been on the calls for a month or so, you're up to date on all
24 the active issues. Judge Kugler's issued three decisions going
25 through the merits of the case and the overview of the

1 litigation. I'm just not sure what it is that's seeking to be
2 accomplished beyond what's already happening, which is in
3 realtime everything that's hot in this litigation, and all of
4 the issues have been crystalized, really, over the last month
5 or two, so I would think -- yeah, I don't see a need for it.
6 We certainly don't, frankly, want the extra work and don't feel
7 like there's any need to doing an update or an overview or
8 anything like that, especially since it'll become -- there'll
9 be -- there'll be spin, both sides will be competing to
10 characterize the litigation in the way that they want to, and I
11 don't see any benefit to that at this stage of the litigation.

12 JUDGE VANASKIE: Who will address this issue on behalf
13 of the defendants?

14 MS. COHEN: Your Honor, it's Lori Cohen and I will
15 address this as well.

16 JUDGE VANASKIE: All right.

17 MS. COHEN: And so, again, here, really, really it
18 comes down to your preference, Your Honor, because we had
19 raised this I believe last month in our -- in some of our
20 communications with counsel that we thought this might be a
21 nice way to introduce you to the litigation. It really comes
22 down to what you need and whether you think it will be useful.
23 I think this stems from some prior litigations where perhaps
24 there's been a change of Magistrate or a change in Special
25 Master and something like this has been done, and I think in

1 those instances, at least in my experience, that the person
2 receiving the information thought it was very helpful.

3 So we certainly don't want to inundate you with extra
4 work or information. We also could do a, you know, 30 minutes
5 on a Zoom call, whatever you think is helpful. We were just
6 offering this up to you as something that we thought could be
7 beneficial and has been beneficial in other cases. We're not
8 trying to create busywork but rather we thought this could be
9 useful for you. And, again, we just wanted to propose that to
10 see what you thought.

11 JUDGE VANASKIE: Well, I think it could be useful to
12 me. I don't want to impose on you. I think it might be more
13 efficient than me -- and Judge Schneider gave me a great
14 overview and identified for me the key documents that I should
15 review. I'm thinking about getting a summary from counsel, and
16 I'll put -- I'll ask you if you can suggest a page limit. I'm
17 not looking to put work on you, Adam, I know how crazy busy you
18 all are, but I'm thinking it would be a more efficient way for
19 me to be up to speed on the matter rather than me wading
20 through the orders and decisions that have been entered in this
21 matter.

22 So let me hear, again, from you, Adam, and then maybe
23 you can suggest a page limit for this so, you know -- and I
24 know --

25 MR. SLATER: Sure.

1 JUDGE VANASKIE: -- the logistics, I understand that.

2 MR. SLATER: Well --

3 JUDGE VANASKIE: [Audio distortion] a litigator. Go
4 ahead.

5 MR. SLATER: I would suggest a three-page limit and I
6 would suggest that we be directed not to put in advocacy into
7 these letters. If this is -- if this is meant to bring Your
8 Honor up to speed on who the players are and what the status is
9 of the case, I can't imagine three pages wouldn't be
10 sufficient. And I -- again, we've all filed massive briefs
11 recently where we took, you know, our advocacy positions and
12 laid them out, and I think that will simplify it.

13 You know, I can tell you on our end, you know, we're
14 going to brief this in a, you know, in a way where we'll
15 probably just say this is who the people in the case are, these
16 are the groups of defendants, these are the groups of the
17 claims and this is where we stand right now and here's what's
18 scheduled and basically just recite and attach the upcoming
19 case management order schedule because, again, from our
20 perspective, you know, we don't think there's much more needed.
21 So as long as we know those parameters can be, you know,
22 observed, I think that it -- then it's not as heavy a lift.

23 If this is going to be an advocacy piece, then, you
24 know, then it becomes a much more difficult thing on both sides
25 because then both sides are just trying to convince the Court

1 of the merit of their positions in this litigation, which,
2 again, I don't think that's really what we need right now.

3 JUDGE VANASKIE: Lori?

4 MS. COHEN: Yes, thank you, Your Honor.

5 So, again, we have a slight disagreement. I would
6 think that three pages, it would be very challenging to put
7 even the basics in. And I agree with Mr. Slater, we shouldn't
8 be advocating in this because there's plenty of that to go
9 around in our briefs; but I would propose ten pages at the
10 outside. Again, our thought was something on each side giving
11 sort of their view on the overview of the litigation claims,
12 defenses, the status, key rulings, basic background
13 information. So we perhaps could work on sort of an agenda,
14 like here are the five things each side should address, but I'm
15 thinking that three pages would not give Your Honor that much
16 and then you'd have to be, you know, going through attachments.
17 I'm thinking ten pages would be a good amount. It's sort of
18 akin to even Science Day that we sometimes have in these
19 litigations where each side has a non-advocacy presentation.
20 So, again, I'm not suggesting that this has to be to the full
21 extent of that, but I would think about ten pages each side.
22 And we could talk about either doing it, whatever Your Honor
23 thinks is more beneficial, either a letter or we can do a
24 PowerPoint; again, open to suggestions. It's really for you
25 and what you think would be most helpful to you.

1 JUDGE VANASKIE: All right. Anything else, Adam?

2 MR. SLATER: No, Your Honor.

3 JUDGE VANASKIE: All right. Here's what I -- I would
4 like the letters, I would like the written summary. And I
5 think, from my perspective, that's a more efficient thing to
6 do. I'm -- I do think three pages are too little. I don't
7 want to be viewed as -- well, I'm just going to split it down
8 the middle. What I'm going to suggest is no more than ten
9 pages and not an advocacy piece, just an information piece that
10 is useful to bring me up to speed.

11 Yes, I have learned a lot in the last month in
12 attending these conference calls and now conducting this
13 conference call; but having something like that to fall back to
14 would be extremely useful, from my perspective. So let's do it
15 on that basis.

16 Now, how much time do you want before you submit
17 these? I don't intend to impose any deadline but what are you
18 thinking on that, Lori?

19 MS. COHEN: Maybe two weeks. Would that be enough
20 time? Or, I don't know, Mr. Slater, if you want to push it out
21 more than that. Again, I think that we want to get it to you
22 as quickly as possible to help you. Would that give it to you
23 soon enough or do you want it sooner?

24 JUDGE VANASKIE: You know, it would be nice if I had
25 it before the next call.

1 MS. COHEN: Okay.

2 JUDGE VANASKIE: That's what I'm thinking.

3 MS. COHEN: Great.

4 JUDGE VANASKIE: Again, when I say ten pages, I mean
5 double-spaced, I don't want ten pages single-spaced. That's
6 what the local rules require so that's good for my old eyes.

7 MS. COHEN: Okay.

8 JUDGE VANASKIE: All right? Okay? Is that all right
9 with you, Adam?

10 MR. SLATER: Oh, whatever you say is okay. Should we
11 not have exhibits so we don't turn this into a monstrous
12 submission?

13 JUDGE VANASKIE: Yes, I would not suggest including
14 exhibits. Ten pages of narrative should be fine.

15 Now, I will tell you this: If you want to, this gets
16 a little bit creative, I teach a law school class on electronic
17 evidence and we have an E-filing component and I require my
18 students to link to the record items that they cite in the
19 filing that they have to make. It can be done but I'm not
20 requiring it. If you do that, or if you want instructions, I
21 can send you instructions on how that can be done. It
22 certainly is more efficient for the reader of a matter to click
23 on a link and it goes right to that document, but it won't be
24 required.

25 No exhibits. You can certainly -- I expect that

1 you'll cite back to the record to specific document numbers or
2 docket entry items and we'll go from there.

3 Any questions on that?

4 MS. COHEN: No. We would love to have whatever you're
5 offering in terms of the link and how you like that, that would
6 be helpful.

7 JUDGE VANASKIE: Yeah. I'll send you what I provide
8 to my students on how to link back to the ECF record.

9 MS. COHEN: Great. Thank you.

10 JUDGE VANASKIE: Thank you.

11 MR. SLATER: Your Honor, it's Adam Slater. You're
12 talking about hyperlinking, right?

13 JUDGE VANASKIE: Yes, hyperlinking.

14 MR. SLATER: Okay.

15 MS. COHEN: Great. Thank you, Your Honor.

16 JUDGE VANASKIE: I'll send everybody -- when I say
17 everybody, you know, it would be helpful if for now I get an
18 email with all the addresses of the lead counsel on both sides
19 so I can put my own list together so I can then reply that way.
20 But I realize what I can do is just send it to Seth and Adam
21 and then you can distribute it, but however you think would be
22 best.

23 MS. COHEN: We're happy to put together a list on the
24 defense side and get that to you today.

25 JUDGE VANASKIE: Okay. What about you, Adam? Do you

1 want to be just the conduit?

2 MR. SLATER: Well, if you want all the addresses, I
3 think -- I think Ms. Cohen has them, so if she wants to provide
4 you our email addresses and names, too, I will certainly agree
5 to letting her do that.

6 It sounded like you were going to do that, right,
7 Lori?

8 MS. COHEN: That's fine. I'll just -- I'll just have
9 you send me an email of who you want included so we can compile
10 it.

11 MR. SLATER: We're talking about the mid-week -- I
12 mean for the communications with the Judge, it would be the
13 four co-leads.

14 MS. COHEN: Okay.

15 JUDGE VANASKIE: Okay? All right, great.

16 All right. Item Number 5 we'll cover with Judge
17 Kugler when we bring him on the call.

18 Item Number 6 is this question of what to do about
19 scheduling the deposition of the ZHP employees. Who's
20 addressing this issue on behalf of the defense group?

21 MR. GOLDBERG: Your Honor, this is Seth Goldberg on
22 behalf of the ZHP parties.

23 We have set forth this issue in a number of different
24 filings and you have our positions on Page 10 of Ms. Cohen's
25 letter.

1 Just to recap for Your Honor, then I thought I would
2 just hit a few points. Judge Schneider approved this schedule
3 of the ZH party employee depositions on January 15. He heard
4 argument on that on January 13 and the order -- the schedule
5 that he approved was actually submitted to him on January 5th.
6 And if Your Honor looks at Exhibit E of our letter, you'll see
7 the ZHP party deposition proposal that was before Judge
8 Schneider on December 8th and January 5th. So where we are now
9 is we have a schedule that's been approved.

10 Since Judge Schneider approved that schedule, Mr.
11 Slater and plaintiffs have complained that the schedule that
12 Judge Schneider approved results in the overlapping of ZH party
13 depositions and there -- that's not disputable. That has been
14 at issue since the December 8th proposal that we made. It's
15 always been explicit in these proposals that there would be
16 some overlap of the ZHP party witnesses due to the complexities
17 of deposing Chinese nationals in this case. And so I thought I
18 should just raise a few points. But, you know, what -- what is
19 clear is that the overlapping of depositions that's at issue is
20 really of plaintiffs' own doing. And there are three things
21 that have happened over the last five months that make that
22 clear.

23 First, you know, plaintiffs raise this issue now about
24 the overlapping of depositions as if -- as if it's a new issue,
25 as if somehow it wasn't before Judge Schneider, but it has

1 always been at issue. Judge Schneider first raised the
2 scheduling of depositions back in August of 2020. And at the
3 September 16th conference, I raised with plaintiffs and the
4 Court the fact that these depositions were going to have to be
5 done notwithstanding the 12-hour time zone difference between
6 the East Coast, Eastern Standard Time, and Hong Kong time. And
7 I don't know how much Your Honor has read the submissions
8 related to depositions and so it's a little bit hard to -- I
9 don't know how detailed to get, but Your Honor may be aware
10 that the Chinese national witnesses --

11 JUDGE VANASKIE: Yes, I am familiar with the
12 background.

13 MR. GOLDBERG: Oh, okay.

14 JUDGE VANASKIE: Sorry to interrupt. I just wanted to
15 let you know so you didn't have to go into too much detail, but
16 I understand they have to travel, I understand they can only be
17 deposed in Hong Kong or some other place, one of the letters
18 mentioned Macao or Singapore. So I am familiar with that issue
19 and the difficulties that that presents.

20 MR. GOLDBERG: Right.

21 JUDGE VANASKIE: I'm also familiar with the fact that
22 you've got to increase the time for translation and many of
23 these witnesses are -- you need the translator. So, yes, I'm
24 familiar with those -- those matters.

25 MR. GOLDBERG: Okay. Very good, Your Honor.

1 So I think the point about the time zone difference,
2 and one thing that's really important is, plaintiff could
3 alleviate that issue if they, themselves, wanted to travel to
4 Hong Kong to take these depositions. They've known about this
5 12-hour time zone difference since we started discussing the
6 depositions back in August and September, and the time zone
7 difference would go away if plaintiffs' counsel wanted to
8 travel to Hong Kong for the depositions. There's certainly
9 nothing prohibiting a U.S. citizen from traveling to Hong Kong
10 and being there and -- you know, but since the outset of
11 talking about depositions, plaintiffs have, and understandably,
12 taken a position that due to COVID, they're not willing to
13 travel for the depositions and that the depositions should be
14 done by Zoom.

15 You know, of course, it really underscores the effort
16 that ZHP is undertaking by sending witnesses and having
17 witnesses volunteer to travel ten hours to Hong Kong for the
18 depositions when plaintiffs' counsel are, themselves, not
19 willing to do so.

20 So, you know, the time zone issue is a fact. It could
21 be alleviated by traveling closer to Hong Kong or to Hong Kong,
22 but that is something plaintiffs' counsel is choosing not to
23 do.

24 The other complicating factor for the schedule is the
25 witnesses that plaintiffs chose to request to depose in late

1 December, on December 8th, ZHP proposed 13 witnesses total,
2 seven of whom are in China, and all seven of those Chinese
3 witnesses were designated to cover all of the topics in
4 plaintiffs' 30(b)(6) notice. And after December -- after that
5 December 8th schedule, plaintiffs then, on December 17th,
6 proposed adding additional -- seven additional witnesses. Five
7 of those witnesses Judge Schneider has granted defendants leave
8 to move for a protective order. And, Your Honor, we filed a
9 protective order motion as to four of those witnesses last
10 week. The fifth witness is the CEO of ZHP and we'll be filing
11 a motion for a protective order as to his deposition at the end
12 of the deposition record. But these five -- these five
13 witnesses, plus two additional witnesses, were proposed after
14 December 8th, on December 17th. Judge Schneider asked us to
15 add those witnesses to the schedule, even though those
16 depositions -- some of those depositions may not happen; and by
17 adding those witnesses to the schedule, we've loaded -- loaded
18 up the number of witnesses that need to be deposed in March.
19 And, of course, given the time zone difference and given the 75
20 percent add-on for translation time, it -- it creates a
21 situation where there's going to be overlapping depositions.
22 But plaintiffs, you know, knew this going in when they proposed
23 adding those witnesses.

24 And there are really two other points to make, which
25 is that plaintiffs have had the opportunity twice to, at least

1 twice, to have a change to the schedule to accommodate the
2 depositions that they are -- or to accommodate their concern
3 about overlapping depositions.

4 On November 24th, Judge Kugler modified the case --
5 the scheduling order in this case and set a deadline for fact
6 discovery as to general causation to be completed on April 1.
7 And on the same day, at that same conference, the issue of the
8 Chinese depositions, the time zone differences, the
9 translations, that was all at issue on the same day before
10 Judge Schneider. And if Your Honor reviews the 11/24
11 transcript, you'll see that all of these issues were discussed
12 at length. But plaintiffs did not raise this concern about
13 overlapping depositions or any concern about the Chinese
14 depositions when Judge Kugler issued his order about the
15 general -- about the fact discovery for general causation.

16 Then on January 6, the parties submitted to Judge
17 Kugler a revised scheduling order that sought to push a number
18 of depositions and discovery that do not relate to general
19 causation to the April 1st through August 1st period. And that
20 was really the opportunity for plaintiffs to say, you know,
21 Judge, we have a problem with the schedule as it relates to the
22 depositions of the Chinese witnesses. And, in fact, the day
23 before the parties submitted that schedule to Judge Kugler, the
24 January 5th proposal that's set forth in Exhibit D was
25 presented to Judge Schneider and plaintiffs -- that was -- that

1 was really the time for plaintiffs to say there was a problem
2 with the schedule. They -- they didn't do that. And so as a
3 result, we have this -- we have this situation where there are
4 overlapping depositions in March.

5 The ZHP parties have tried -- had proposed some
6 modifications that plaintiffs did not accept. We proposed that
7 those disputed witnesses be pushed into April. And -- and not
8 only -- not only did we make that proposal because those
9 witnesses are in dispute, but those witnesses do not bear on
10 general causation, which -- which is the issue that needs to be
11 resolved or the discovery that needs to be completed by April
12 1. None of the disputed witnesses or any of the additional
13 witnesses that plaintiffs proposed on December 17th are
14 necessary -- none of their testimony is necessary for the issue
15 of general causation. All of the 30(b)(6) topics that
16 plaintiffs have identified will be the subject of testimony in
17 March, and, you know, plaintiffs -- plaintiffs did not agree to
18 moving witnesses into April; but just as we moved other
19 witnesses that did not have a general causation issue in their
20 testimony to beyond April, one -- one reason to consider moving
21 some of these witnesses to after April is that their testimony
22 does not bear on general causation.

23 Plaintiffs did not accept our suggested modifications
24 and so the ZHP parties are prepared to move forward with the
25 schedule that Judge Schneider approved.

1 Plaintiffs will tell you -- I'm sure Mr. Slater will
2 tell you that this morning, about five minutes before this
3 conference, he sent the proposal over to the ZHP parties to
4 continue to discuss this. And, you know, it's really -- it's
5 really something that the only meaningful proposals we've
6 gotten from plaintiffs about the schedule have come after the
7 January 5th scheduling order, after Judge Schneider's order,
8 but just in scanning Mr. Slater's proposal, he has -- he has
9 accepted the dates of the witnesses that were proposed on
10 December 8th with some slight modifications but he still
11 maintains that all of the additional witness that were in his
12 December 17th letter, their depositions need to be moved,
13 acknowledging that it's their depositions that are creating the
14 problem with overlap.

15 And so, you know, our view is if -- if plaintiffs do
16 not want to have the overlap that's being caused by the seven
17 additional witnesses they proposed on December 17th, that those
18 witnesses should be moved into April; otherwise, the ZHP
19 parties are prepared to move forward with all the depositions
20 as ordered by Judge Schneider on January 15th.

21 JUDGE VANASKIE: Adam, what are you looking to
22 accomplish here?

23 MR. SLATER: Well, the first thing I'm looking to
24 accomplish, Judge -- this is Adam Slater, for the record --

25 JUDGE VANASKIE: Right.

1 MR. SLATER: -- is to give you our position in less
2 than a half an hour, so I'm going to try to do that.

3 JUDGE VANASKIE: Okay.

4 MR. SLATER: I'm going to try to be a person who's
5 trying to resolve an issue as opposed to smearing the other
6 side before saying, but we'll talk but they're stuck with what
7 they got. I'm someone who tries to work through something and
8 find something that's reasonable as best we can.

9 So I'm going to start with what the defense said on
10 Page 12 of their brief, which is consistent with the ongoing
11 meet and confer that we have been in process with, which says
12 that the ZHP parties are not opposed to modifying the schedule.
13 So that's -- I think both sides recognize we need to modify the
14 schedule.

15 And I will say one other thing. As Your Honor has, in
16 our letter, an attachment which is an email exchange between
17 myself and Judge Schneider and Mr. Goldberg, on Judge
18 Schneider's last day as a federal Magistrate where we were
19 trying to work through some of these things and Judge
20 Schneider, before he entered the order, was going back and
21 forth with us talking about the problems with the schedule and
22 before we entered -- he entered the order, he said, it looks
23 like ZHP will be unable to resolve the issue today with
24 plaintiffs or even get together to resolve the issue today, and
25 he concluded with he feels our pain and wishes us the best of

1 luck, which I appreciated.

2 So he entered the order because I think he had to
3 enter an order, but I think it's not accurate to say that it
4 was understood that was the end of the road. And I think, you
5 know, to give ZHP credit, I'm glad that they've continued to
6 talk to us and acknowledged in their letter to Your Honor they
7 want to talk.

8 So where does that leave us?

9 Number one, we never said no to April. We said yes to
10 April. But what we said is we can't do that without the
11 approval of the Court because there's a scheduling deadline.
12 So we said, let's talk to Judge Vanaskie and let's figure out
13 if we have the leeway to move some of the depositions into the
14 early part of April which helps to give us some breathing room.
15 That's number one.

16 Number two, the problems that we're having is, and I'm
17 not going to go back over the history of why February got
18 sliced out and January, but Your Honor understands it and Judge
19 Schneider placed on the record at the last conference with all
20 counsel that he understands that the plaintiffs are in a
21 horrible position because of this, and -- and I certainly think
22 the defense understands that as well, and I -- and I would like
23 to believe they're either trying to get the schedule done
24 because they want to move beyond it, not to put us in a tough
25 situation like going to Hong Kong when one of my associates

1 just sent to me an email showing that U.S. citizens are not
2 allowed to travel to Hong Kong. And I appreciate Mr.
3 Goldberg's offer for me to fly to Hong Kong right now but in
4 this day and age, with what's going on with public health, I'd
5 prefer not to get on a plane and go live in Hong Kong or
6 somewhere else, if that's a state that's on a complete lockdown
7 right now, it's very hard to move around, or go live somewhere
8 for two or three weeks away from home. I understand witnesses
9 must do that, but that's a litigation reality. For counsel to
10 do that within the United States, it's very hard and we can't
11 go to Hong Kong.

12 So where does that leave us?

13 What I sent to Mr. Goldberg yesterday -- or today, I
14 should say, was something that we've been working through to
15 try to reduce the overlap. The current schedule has two and
16 three depositions going simultaneously, and these are
17 depositions starting at 7:00 at night Eastern going to midnight
18 Eastern because of the time zone difference to take the
19 depositions up. So what I'm not going to do is negotiate dates
20 and witnesses with Your Honor, but what I would suggest is
21 this: We sent what we thought reduced the overlap. It's
22 dependent on Your Honor giving us the right to move some
23 depositions into April, with the understanding that if we have
24 to move depositions later -- we don't agree with defense
25 counsel that none of these witnesses will relate to general

1 causation. We haven't been through all their custodial files
2 yet, as I'm sure they have not either, but I'm sure everybody
3 touches on general causation to one extent or another. We
4 would need to have an understanding it may be necessary to
5 supplement some expert reports because we won't have as much
6 time to get the transcripts and get them to our experts. That
7 shouldn't be a problem because our base reports will be done
8 and served.

9 So we served a schedule today that reduces the
10 overlap. For example, during the first week of March, rather
11 than starting two witnesses on Sunday night at 7 p.m., we
12 suggested let's start one witness at 7 p.m. and start the other
13 witness Tuesday night at 7 p.m. so there's less overlap.
14 That's an example.

15 My -- my under -- the bottom line is we would ask Your
16 Honor, let us continue to talk, let us try to work the schedule
17 out. If we can't, we can contact Your Honor and tell you we've
18 exhausted our discussion and this is where we are. I would
19 like to believe that if we have April to work with, if we can
20 try to reduce the overlap, I think that would be good for
21 everybody. So we just need more time to work this out.

22 Thank you.

23 JUDGE VANASKIE: All right. Thank you very much,
24 Adam.

25 What is the deadline for the briefing on the

1 protective order motion?

2 MR. SLATER: Friday. Our brief is due Friday in
3 opposition, I believe, unless I have that wrong; but I think
4 it's Friday.

5 JUDGE VANASKIE: And is there a date for --

6 MR. GOLDBERG: I believe -- I believe there is a
7 deadline for reply on February 5th.

8 JUDGE VANASKIE: All right. So that would be
9 important for me to resolve that as promptly as possible. That
10 would help with scheduling.

11 If none of the -- all of the witnesses are going to be
12 deposed, I understand it, it doesn't change anything.

13 Seth, did you want to be heard?

14 MR. GOLDBERG: Yeah. Your Honor, I just think that it
15 is important to -- like, when we think about April 1, that
16 going beyond April 1 -- and I understand what plaintiffs are
17 saying is that they would be willing to -- or they would want
18 to move witnesses into April 1 or beyond April 1 but they're
19 concerned that that would -- that they would then need to push
20 back the filing of their expert reports on general causation,
21 which --

22 MR. SLATER: That's not what I said.

23 JUDGE VANASKIE: Well, what are you saying, Adam?

24 MR. SLATER: I said we would meet the deadline for our
25 expert reports but we may have to serve a supplement at some

1 point, if we took a handful of depositions in April, to address
2 that testimony to the extent relevant, but we're not suggesting
3 to change the expert report deadline.

4 JUDGE VANASKIE: Okay.

5 Can all of this be done without affecting the schedule
6 for the submission of the in limine motions that are
7 contemplated, or maybe it's summary judgment motions on
8 causation, but the motion practice that's expected on
9 causation?

10 MR. GOLDBERG: The motion practice --

11 MR. SLATER: That's much later in the process.

12 MR. GOLDBERG: Right, right.

13 MR. SLATER: But I didn't --

14 JUDGE VANASKIE: I --

15 MR. SLATER: I'm sorry, Your Honor. It's Adam Slater.

16 I did misspeak. Our brief on the protective order I'm
17 told is due Monday, not Friday.

18 JUDGE VANASKIE: Okay.

19 MR. GOLDBERG: Your Honor, I think -- I do think it's
20 worth noting that those -- the depositions that would
21 potentially be moved in April, three or four of them really can
22 be sales related, which should have no impact whatsoever on
23 general causation, leaving two or three individual witnesses,
24 were they to even be deposed, but those would be witnesses that
25 are the subject of protective order motions because their

1 testimony is cumulative of their -- of their supervisors who
2 will be deposed and who will be deposed on the 30(b)(6) topics
3 that plaintiffs think bear on general causation. So it's very
4 unlikely that any of those additional witnesses would have any
5 testimony that's material to any expert's report. But we
6 certainly do not want to be somehow conceding that plaintiffs
7 should be able to supplement their expert reports by taking
8 testimony in April.

9 JUDGE VANASKIE: All right. You know, to me, it does
10 seem that this is a matter that warrants further meet and
11 confer of counsel, that it is a resolvable issue. I understand
12 your concern, Seth, in terms of you don't want to all of a
13 sudden get hit with a supplemental expert witness report that,
14 you know, just gives an opportunity to expand information that
15 could have and should have been presented initially. And I'm
16 not hearing that is the intention on the plaintiffs' part, but
17 I do think this is a matter that can be resolved. I think
18 there can be enough flexibility with the ability to get these
19 depositions scheduled -- scheduled in a manner that you're not
20 double-tracking and triple-tracking, I think that's a term
21 that's been used, the depositions.

22 So what I would urge is that you continue to discuss
23 this. Obviously, a proposal was sent to you. I don't have
24 that proposal nor should I have it at this stage. But I think
25 you can move forward with your discussions and see what you can

1 -- see what you can reach agreement on. By the time of our
2 next call in February, we'll be in a better position maybe to
3 have resolved those motions for protective orders and to give
4 you some certainty going forward. But in the meantime, I
5 wouldn't defer -- defer your discussions to see what you can do
6 to avoid these overlapping depositions or simultaneous
7 depositions occurring, with an understanding that some
8 depositions would be taken in April, but I think that would be
9 all right if it doesn't affect the overall schedule of the
10 case.

11 I understand the concern on expert witnesses and we'll
12 have to address that issue down the road, I suppose.

13 But, you know, this is a lengthy explanation from me
14 and a lengthy presentation from each side on a matter that I
15 think just requires more discussion with a view towards trying
16 to reach an agreement because I think you're -- I agree with
17 Judge Schneider, I feel your pain in terms of the double-
18 tracking and triple-tracking of depositions and would like to
19 see if you could find a way to avoid it.

20 Perhaps, Adam, you'll be able to reach an
21 understanding that some of these witnesses that you want to
22 depose won't really affect the causation analysis or provide
23 information that affects that analysis, won't require
24 supplementation of an expert witness report, for example, and
25 that would make it easier to move that deposition of that

1 particular person to April.

2 So I think that's about all we can do on this
3 particular issue at this time.

4 All right. Let's go to --

5 MR. SLATER: Thank you, Your Honor.

6 JUDGE VANASKIE: -- the update on -- it looks like
7 everything is set for Aurobindo, Teva and Torrent; is that
8 correct?

9 MR. NIGH: Your Honor, this is Daniel Nigh for the
10 plaintiffs.

11 I will say for Aurobindo and Torrent, we do have a few
12 outstanding issues, but, you know, mainly the time that the
13 depositions are going to start, you know, being one of them,
14 and, for Aurobindo, some arguments about a few additional
15 witnesses that we want to take that defendants think are
16 duplicative. But other than that, at this point, we have
17 agreed upon schedules, we're moving forward with those
18 depositions. We've agreed upon the amount of time for the
19 30(b)(6) witnesses.

20 So I would say that at this point those other issues
21 we're continuing to meet and confer. I hope that we'll be able
22 to reach agreements on those issues. I don't think there's
23 anything that needs to be decided today.

24 JUDGE VANASKIE: Okay. Adam?

25 MS. WHITELEY: And, Your Honor, this is Conlee

1 Whiteley for Teva -- to address the Teva depositions. We have
2 worked just about everything out. We are working out a few
3 kinks with deposition dates and timing to accommodate the
4 witnesses' attorneys' schedules and also be more as to exactly
5 which fact depositions will be taken. But I think we've been
6 meeting and conferring successfully and we will be able to work
7 out those issues.

8 JUDGE VANASKIE: Very well.

9 Anything else, Adam, from your perspective on Teva,
10 Torrent and Aurobindo?

11 MR. SLATER: No, Your Honor. I think that those on
12 plaintiffs' side that needed to address it have addressed it.
13 Thank you.

14 JUDGE VANASKIE: Okay. Well, the next issue
15 proceeding through this agenda is the summary of defendants'
16 document production. It seems to me that this is an issue that
17 you teed up or you raised, Adam, and I'm not exactly sure what
18 you're -- what you're looking for here in terms -- in terms of
19 you certainly have alerted me to the fact that much of the
20 document production occurred near the end of the production
21 period, and I was aware of that, thank you. But tell me what
22 point you're trying to make here or what are you looking for or
23 are you just letting me know that this is a difficulty you're
24 confronting?

25 MR. SLATER: Yeah, Your Honor, I'm going to hand this

1 off to another member of our team.

2 I'll just briefly say this was to get Your Honor up to
3 date that there are ongoing issues and we think that there may
4 be some -- some more issues coming up. But I want to hand off
5 to another member of my team who I think was going to address
6 this more specifically.

7 MR. PAREKH: Your Honor, this is Behram Parekh.

8 We really wanted to raise this issue because, you
9 know, as we've been reviewing these documents, given the volume
10 and then the schedule for the deposition, it's become clear
11 that there's absolutely no way, despite throwing bodies at
12 this, that we're going to be able to get through these
13 documents in time, given the number of documents and the number
14 of defendants, to be completely prepared for these depositions,
15 and we wanted to make sure that Your Honor was aware of this
16 issue and that, you know, there may be a time in the future
17 where we come back to Your Honor and say, you know, we took
18 this deposition in February. After that point, we discovered
19 these documents that are relevant to this particular witness or
20 are relevant to a different witness that we didn't take, but we
21 were not able to review those documents in time and now need to
22 either schedule a second deposition of that witness or to
23 schedule a deposition of a witness that we did not think we
24 needed a deposition of.

25 We believe that this is the situation that was created

1 by the defendants, by their failure to abide by the rolling
2 productions, and by producing 70 to 80 percent of their
3 documents at the very last moment.

4 Defendants also continue to produce documents. We
5 just got another set of documents in yesterday and it's, you
6 know, virtually untenable for us to be able to -- to be able to
7 be taking depositions and then keep getting documents in and
8 then for defendants to take the position that, no, you don't
9 get to take that deposition over because, you know, you only
10 get one shot at it.

11 So we just wanted to raise this issue and make sure
12 that it was on Your Honor's radar so that there wouldn't be an
13 -- you know, so that if three months from now we come back to
14 Your Honor, there's no claim that we didn't raise this in a
15 timely fashion.

16 JUDGE VANASKIE: I see. All right. Who will be
17 addressing this issue on the defense side?

18 MR. GOLDBERG: Your Honor, this is Seth Goldberg. I
19 will start but I'll certainly invite Ms. Cohen or Mr. Trischler
20 to weigh in.

21 We really didn't know where plaintiffs were going with
22 this because we did not meet and confer on this issue. I mean,
23 we asked them what they thought this issue was to be about.

24 You know, the record will be very clear for Your Honor
25 that the defendants met their rolling production obligations

1 and produced documents throughout the rolling production
2 period. Not surprisingly, given the number of search terms,
3 which was over 400, the number of ESI custodians for ZHP, for
4 example, there were more than 80, from many of the other
5 defendants there were more than two dozen. Much of the
6 document production wasn't ready and processed to be produced
7 until they were in the production.

8 However, what we did, each defendant, was to produce
9 documents based on the priority order that plaintiffs requested
10 on May 7. And for all of the priority custodians, the
11 documents were produced and plaintiffs were given a number of
12 opportunities with Judge Schneider to prioritize, to request
13 prioritization in their production and defendants satisfied
14 those requests to prioritize.

15 So we certainly take issue with the notion that
16 plaintiffs are now, two months after the substantial completion
17 of the document productions, and without any specificity,
18 trying to put down a marker that they are going to come back
19 and ask for additional depositions. Of course, defendants
20 don't want to have their witnesses be deposed more than once,
21 and it's -- it's, you know -- the question is whether we should
22 be going forward with any of the deposition exams. But we
23 certainly think the record reflects that defendants satisfied
24 their document production obligations, there have been no
25 material deficiencies with respect to those document

1 productions, and we don't -- we don't really think that
2 plaintiffs are making this -- are laying -- laying down this
3 marker, you know, it certainly seems to be premature, at best,
4 to be laying down this marker.

5 But I'll invite Ms. Cohen and Mr. Trischler, since we
6 did not know where plaintiffs were going with this issue.

7 MR. TRISCHLER: Your Honor, Clem Trischler. I'll take
8 Seth's suggestion and add some perspective for the Mylan
9 defendants, in particular.

10 You know, Mr. Goldberg's absolutely correct that all
11 of the defendants worked diligently to produce documents in
12 response to the Court's ESI order, the search terms and the
13 custodians. In the case of Mylan, we had over 50 custodians
14 that were on the list, we worked diligently to review millions
15 of documents and to produce responsive material. Plaintiffs
16 have had all of that material since November.

17 I'm not looking to cast aspersion or blame on anybody
18 but what I heard Mr. Parekh say this morning is they're not
19 ready to take these depositions and so they want carte blanche
20 permission from the Court then to depose everybody twice.
21 That's not the solution or the remedy. If what I'm hearing
22 from the plaintiffs is that they have not been through the
23 production in the 60 days they've had the documents to be ready
24 to take these depositions, then the solution is to suspend the
25 deposition schedule. We worked really hard, on the defense

1 side, to come up with an agreement for plaintiffs. We agreed
2 to produce witnesses early in February. We've got 12 witnesses
3 from all -- in the United States and in India that we've agreed
4 to produce and make available. And if the plaintiffs are
5 saying now that we're not ready, that we haven't been through
6 your documents, so we're going to depose these witnesses but,
7 oh, by the way, don't be surprised if we come back and say,
8 well, now that we've reviewed these documents we want to depose
9 them all again, that's not fair and that's not appropriate.
10 And I'll take them at their word, if they haven't been through
11 them, then let's suspend the deposition. But you can't just
12 raise this issue as sort of a get-out-of-jail-free card and
13 say, yeah, we'll go forward with these depositions but now we
14 get to do it again. That's what I'm hearing and that's what I
15 don't think is fair.

16 So I think if Mr. Parekh is right that the plaintiffs
17 have not been through the documents, then let's suspend all the
18 depositions and the Court can decide how much time they need to
19 get through the rest of the documents and then we'll start
20 again.

21 JUDGE VANASKIE: Well, I don't think that's going to
22 happen, by the way. I don't think we're going to suspend
23 depositions.

24 I understand this to be just raising the issue or
25 presenting it for my awareness that there may be a necessity to

1 ask for a redeposition of a witness. We'll have to address
2 that issue if and when it comes up or you continue to have a
3 dialogue about this particular -- about this particular item.

4 I didn't mean to preempt -- who else would be
5 addressing this? Is it Lori that will be addressing it or --

6 MS. COHEN: Yes, Your Honor, although my colleague,
7 Ms. Lockard, I think is going to address the --

8 JUDGE VANASKIE: All right.

9 MS. COHEN: -- document issues.

10 MS. LOCKARD: Yes, Your Honor, for Teva, this is
11 Victoria Lockard, and we agree with what our co-defendants have
12 expressed here.

13 This has been an issue, I think, that has been
14 percolating around the edges for quite some time. And this is
15 exactly why I think the letter briefing will be helpful to you,
16 Judge, so you could see what the prior orders and discussions
17 were. But the plaintiffs have been representing since this
18 process started that they're sitting back with an army of
19 reviewers to go through these documents as we produce them.
20 We're now hearing that that's not the case, that they're not
21 able to get through them. Again, like Mr. Trischler said, that
22 may be fine, we understand, it's a lot of material, but, you
23 know, we have not -- for Teva, we have not -- we don't think
24 this is going to be an issue. We have scheduled our
25 depositions to occur within the Court's order. We're working

1 around the clock to try to complete our productions. And to
2 suggest that we, that the defense as a whole, did not comply
3 with the Judge's orders on the rolling production is just not
4 true. And there's a lot of history and a lot of water under
5 the bridge there with respect to how the electronic discovery
6 process went and the decisions and orders that were made.

7 So, you know, Teva, for one, is continuing its rolling
8 production pursuant to Judge Schneider's orders and the
9 agreement of the parties, and we intend to complete our
10 production on February 15th. But there will always be
11 documents here or there that -- that may be located through the
12 process of prepping our witnesses that maybe get produced, and
13 Judge Schneider has always said, you know, plaintiffs, you're
14 not going to have every single document out there when you take
15 a deposition.

16 So we don't think there's any -- there's any ground to
17 say at this point that there's a basis for reserving the right
18 to come back and redepose our witnesses. That's just -- that's
19 just not fair and if there is a rare exception or, you know,
20 very good cause for doing that, we would just ask that the
21 plaintiffs communicate with the defendants as to which
22 particular witness, which documents, and which parties,
23 because, so far, I don't think any defendant, certainly not
24 Teva, has been notified that this is a burdening issue for any
25 particular defendant.

1 JUDGE VANASKIE: All right. Thank you.

2 Behram, do you have a brief rebuttal?

3 MR. PAREKH: Sure, Your Honor. This is Behram Parekh,
4 for the record.

5 So our whole point here is that when we raised this
6 issue in December with Judge Schneider, and we've been raising
7 this issue with Judge Schneider at every point in the
8 production process, Judge Schneider had stated previously and
9 has -- and continued to state that we would not be prejudiced
10 if defendants did what they ended up doing and produced 80
11 percent of their documents or 75 percent of their documents,
12 depending on the defendant, on the last day of the rolling
13 production. You know, that is not a rolling production. A
14 rolling production is a relatively evenly divided production.

15 We've had reviewers sitting idle for months on end
16 while defendants continued to produce dribs and drabs of
17 documents and then produce a massive dump of documents on the
18 very last day or even after the very last day of the production
19 deadline.

20 In addition, one of the other issues that Seth came up
21 with was this idea of priority custodians. We identified
22 priority custodians and priority topics months in advance and
23 we continued to ask defendants, have you completed production
24 for this particular custodian, have you completed production
25 for this particular topic, and each time we were told, no, we

1 cannot say that we have completed production for that
2 custodian. So to say that they prioritized those custodians,
3 they may have prioritized those custodians but they didn't
4 complete that priority custodian production.

5 So at any point in time for them to say, oh, we, you
6 know, complied with our obligations is ingenuous. They did not
7 comply with their obligations to do a rolling production. What
8 they did was they did a document dump of the vast, vast
9 majority of the documents on the very last day and then said,
10 you know what? Hey, we're done because, you know, that's what
11 we did and we hit the last-day deadline.

12 JUDGE VANASKIE: All right. You know, right now I
13 think this is just consciousness aware, you know, making me
14 aware of the issue and I certainly was aware of it before, and
15 I appreciate each side has a different perspective here, but I
16 think the appropriate approach will be, you know, if -- if it
17 occurs that you felt you didn't have the opportunity to
18 adequately prepare to take a witness's deposition to either
19 seek leave to redepose or postpone the deposition if you think
20 you need additional time. But right now it's in a vacuum. I
21 don't think there's anything that's properly teed up for a
22 resolution at this time.

23 So I think we just leave it at that and move on then
24 to the next issue, unless -- unless somebody feels strongly
25 otherwise that need to be heard more on this.

1 (No response.)

2 JUDGE VANASKIE: All right. The update on the P3 data
3 issue, we're supposed to -- you're working on a stipulation, I
4 take it. How's that going?

5 MR. GEOPPINGER: Your Honor --

6 MR. STANOCH: Good morning, Your Honor. Go ahead,
7 Jeff.

8 MR. GEOPPINGER: Okay. Your Honor, Jeff Geoppinger
9 for the wholesaler defendants. As we put in our briefs, and as
10 you may recall, there's an issue with respect to the production
11 of this particular data and the defendants Teva have noted in
12 their responses that there's a set prohibition on it, the
13 plaintiffs disagree. We're negotiating, hopefully, a
14 stipulation that will obviate all of this and we've exchanged
15 several drafts and we're working hard, hopefully, to get this
16 tied up before the end of next week so we don't have to file a
17 brief on the 8th.

18 JUDGE VANASKIE: Okay. Good. I hope you can get it
19 resolved.

20 Who wants to talk on this issue from the plaintiffs'
21 perspective? I'm sorry.

22 MR. STANOCH: Your Honor, David Stanoch for
23 plaintiffs.

24 We agree with Mr. Geoppinger's summation in where we
25 are. Nothing to add.

1 JUDGE VANASKIE: Okay. Very well. Great.

2 The next issue is the Short Form Complaints for
3 Losartan and Irbesartan and implementing orders with respect to
4 service of process on the defendants. Is there anything to
5 discuss on this issue and who will be addressing it from the
6 defense perspective?

7 MS. HEINZ: Hi, Your Honor. This is Jessica Heinz. I
8 represent the Aurobindo defendants.

9 JUDGE VANASKIE: All right.

10 MS. HEINZ: I can address that on behalf of the
11 defendants.

12 I have been meeting and conferring with Marlene
13 Goldenberg on the plaintiffs' side. We've had several
14 meet-and-confer calls and we've been exchanging emails and
15 drafts. I think we just have to finalize one more thing
16 relating to the draft of the Short Form Complaint and we should
17 be able to submit that to the Court, hopefully, by the end of
18 this week, an agreed-upon draft for the Short Form Complaint as
19 well as the implementing order.

20 There is another issue, though, that we're continuing
21 to meet and confer on, which is the service of process of the
22 Master Complaints for the Irbesartan and Losartan complaints.
23 And I think Marlene can correct me if I'm wrong, but we are
24 continuing to meet and confer on that and hope to provide the
25 Court with an update at the next conference.

1 JUDGE VANASKIE: All right.

2 MS. GOLDENBERG: Your Honor --

3 JUDGE VANASKIE: Is Marlene on the line?

4 MS. GOLDENBERG: I am. Good morning -- or good
5 afternoon almost.

6 Jessica and I have had a number of productive
7 conversations and I agree we are nearly done on the Short Form
8 Complaints and the associated implementing order, and we
9 should, I think, be able to get that to you today if not
10 tomorrow morning at the very latest.

11 With regard to the service of process issue, I did
12 want to preview this issue for Your Honor just so you
13 understand a little bit of why this might come up.

14 A number of the defendants in this litigation, of
15 course, are located overseas, and we ran into this at the
16 beginning of the Valsartan litigation where a number of the
17 foreign defendants insisted on being served through the Hague,
18 and Hague service, as I'm sure you're aware, is a very
19 time-consuming process that can take upwards of a year because
20 you have to serve the defendant in person in accordance with
21 the country's local rules and in the language of the country.

22 JUDGE VANASKIE: Yes, I'm aware.

23 MS. GOLDENBERG: Right. So, you know, last time, that
24 took a long time and it took a long time to get parties in the
25 case. And when -- now that we're starting the Losartan and

1 Irbesartan portion of this MDL, many, if not most, of these
2 defendants are already here and represented by counsel. And so
3 for them to now take the position that they somehow don't know
4 this litigation exists or that they wouldn't have adequate
5 notice of the litigation absent being served through the Hague
6 is really just going to bog down this litigation and delay us
7 potentially by months, if not years.

8 And so I'm hoping that the Court will provide some
9 helpful guidance on instructing the parties to accept waivers
10 of services since they already have counsel. For any new
11 defendant, if to the extent they're new, not in this MDL
12 before, and located overseas, the order that we previously
13 received, and I believe it was from Judge Schneider early on in
14 this litigation, was that we just need to serve those
15 defendants once through the Hague if they're abroad and that
16 that will be deemed sufficient notice for them to be in this
17 case; and from then on, the electronic service that all the
18 parties have stipulated to should be sufficient.

19 JUDGE VANASKIE: And is the order you're referring to,
20 is that Document 99?

21 MS. GOLDENBERG: You're better at this than I am
22 already. I can look it up.

23 JUDGE VANASKIE: I'm actually looking at the defense
24 letter brief.

25 MS. GOLDENBERG: I have it as well. Let's see. Yes,

1 it is Docket 99, you're right.

2 JUDGE VANASKIE: Okay. All right. All right. So
3 you're going to continue to meet and confer to see if you can
4 resolve this issue without a precedent in Document 99 in terms
5 of how best to proceed. So right now I think that's all we can
6 determine at this point in time is that you're going to
7 continue to try to work this out in terms of the service issue;
8 and, if not, if you're unable to reach an agreement, and
9 defendants have asked for the opportunity to brief it, we'll
10 certainly grant them that opportunity, but we'll try to get
11 that done promptly, too, you know, with a quick deadline.
12 Hopefully, we won't have to. I hope you can reach agreement.

13 MS. GOLDENBERG: I hope so, too, Your Honor.

14 I'll just point out also that, you know, we didn't
15 actually have to file additional Master Complaints here. We
16 could have simply amended the Valsartan Master Complaint but we
17 chose, for convenience sake, for all the parties, to, you know,
18 be nice and give them separate Master Complaints; but I would
19 hope that we wouldn't be penalized and required to take an
20 extra year to serve them again just because of the format of
21 the new pleadings. But we'll continue to meet and confer and
22 circle back in two weeks if we have a dispute.

23 JUDGE VANASKIE: All right. Very well.

24 Anything else on this issue?

25 (No response.)

1 JUDGE VANASKIE: Okay. Thank you.

2 Item Number 11 on the agenda, the filing of amended
3 complaints, that's been taken care of. I will be issuing an
4 order on that. That was the email I received earlier this
5 week.

6 And it looks like perhaps the last item on the agenda
7 is the Mylan privilege log. Who will be addressing this?

8 MR. DAVIS: Yes, Your Honor, John Davis for the
9 plaintiff.

10 JUDGE VANASKIE: Okay.

11 MR. DAVIS: So I don't think there's much to talk
12 about today. We're going to continue to meet and confer with
13 Mylan on their log. I will say that there are issues we have
14 with them that are both systemic and specific to categories of
15 documents.

16 One issue I do think we need some guidance on today,
17 however, is, I had asked counsel for Mylan for a legend
18 identifying attorneys and whether they're in-house counsel or
19 outside counsel around Christmastime, and we just got something
20 from Mylan's counsel this morning. Unfortunately, it's, in my
21 opinion, woefully inadequate. There's a number of names on the
22 list. About half of those names are just names. There's no
23 information about who they are. For the other half, it
24 identifies email addresses to note, I suppose, that they are
25 Mylan employees, but there's no reference to whether they're in

1 the legal department or whether they're in, for example, a
2 different department, like quality control, which, you know,
3 would have a substantial effect I think on whether, you know,
4 some of those communications are actually deemed privileged or
5 not.

6 As you're aware, Your Honor, in-house counsel wear two
7 hats. They're both employees and counsel. And so claims of
8 privilege regarding communications with in-house counsel
9 employees should be viewed a little more skeptically. And
10 having that information as to, you know, where those people
11 reside within the company structure, as well as having, you
12 know, even some basic information, perhaps the other half of
13 the people on the list were literally just a name, I think
14 that's, you know, a major sticking point in us being able to
15 meet and confer because there are 2,500 entries or something --
16 2,200 entries, I believe, on Mylan's latest privilege log with
17 hundreds and hundreds of names on them and we've been unable,
18 until we got this legend, and I still think we're going to be
19 unable really to do anything after this legend that we got this
20 morning, to actually have a productive meet and confer when we
21 can't tell, you know, who the lawyers are, what their roles are
22 even, anything about them, perhaps just names on this list.

23 So, you know, I'd hate to, you know, spend another two
24 weeks just to come back to you on this legend point. I think
25 we can really get to work if we got some guidance on -- on what

1 Mylan needs to tell us regarding the identity of the lawyers on
2 their log and their roles within the company.

3 JUDGE VANASKIE: All right. Who will address this
4 issue for Mylan?

5 MR. TRISCHLER: Clem Trischler, Your Honor, for the
6 Mylan defendants.

7 JUDGE VANASKIE: That's fine.

8 MR. TRISCHLER: As I recall, the privilege log for
9 Mylan was produced on or around December 30, consistent with
10 the Court order that it be issued in this case and entered
11 about the same time as the privilege logs were produced for
12 every manufacturer defendant to this litigation. Until, I want
13 to say Sunday of this week, about two days ago, the only issue
14 that I ever heard from the plaintiffs about the privilege log
15 was whether we could produce a legend to identify who the
16 lawyers are for Mylan to help the plaintiffs evaluate who was a
17 recipient, who was an author of a document, whether that person
18 was or was not a lawyer, and I agreed to do that. And we
19 provided that log this morning, I believe. And now the
20 plaintiffs are saying, well, now that you provided a log with
21 the names of the lawyers, that's not good enough; now you need
22 to tell us additional information.

23 We will meet and confer with them to do that, Judge.
24 But, you know, part of the problem here is, you know, an issue
25 that I think not only Mylan has seen but all the defendants

1 have seen throughout this litigation is that the plaintiffs use
2 these conferences to bypass the rules with respect to discovery
3 processes. There's an order in this case that if there's an
4 issue with respect to a privileged document, there's a
5 procedure that's supposed to be followed. And the plaintiffs
6 are simply bypassing it because they see a conference coming up
7 on Wednesday and say, well, let's have a -- you know, let's
8 have a meet and confer with Mylan over the weekend so we can
9 raise it with the Court, and that's not the way it's supposed
10 to work. If there are issues with the identification of the
11 lawyers, I'll certainly talk to Mr. Davis about it and see if
12 we can work through those issues.

13 The first time the plaintiffs -- although they had the
14 log the end of December, the first time the plaintiffs
15 substantively raised any issue with any of the privileged
16 declarations that Mylan made was on Monday at five minutes
17 after midnight. And there's an ESI protocol that says we have
18 30 days to respond to the 370 documents that they've asked us
19 about, and we will do that when we have a fair opportunity to
20 do it; but simply raising it without, you know, following the
21 protocol, without following the rules, without really
22 exhausting the meet and confer, I don't think is appropriate.

23 You know, Mr. Slater talked at the beginning of this
24 conference about how we have a lot of things to do, there's a
25 lot of moving parts to this litigation and when we constantly

1 raise issues where meet and confers haven't been exhausted,
2 it's counterproductive. And that's really what we have here
3 with this log.

4 As I said, plaintiffs asked for the names of the
5 lawyers on the entry. We provided that to them. Now they have
6 other questions. We'll work to address those. We'll respond
7 to the items that they've questioned as far as whether they're
8 privileged or not and provide our response in the appropriate
9 time so that the Court can then address it; but, really, the
10 whole issue is premature, from my perspective.

11 MR. DAVIS: Your Honor, may I respond to that briefly?

12 JUDGE VANASKIE: Yes, you may.

13 MR. DAVIS: This is John Davis, again, for the
14 plaintiff.

15 So, again, I said at the outset that we're continuing
16 to meet and confer with Mylan on our issues that are with the
17 privilege log documents themselves. We have, as I said, we
18 have issues that are systemic and we've identified about 400
19 documents that we are meet and conferring on. We're still
20 going to do that.

21 My issue is that I've been asking for this legend for
22 the better part of a month now, and then we get it, perhaps
23 coincidentally, the morning of this call, and then I hear, oh,
24 it's -- you know, we need to meet and confer about this more.
25 And we have depositions coming up, as Your Honor's aware, we've

1 been talking a lot about the specific schedule and the
2 compressed schedule and perhaps the need to, you know, at least
3 push a few depositions back to April, as you've heard. And I
4 think that, you know, to at least get some guidance on this
5 legend is -- would be helpful for our meet and confers with
6 Mylan on the -- on the substantive privilege log itself.

7 JUDGE VANASKIE: John, what additional detail are you
8 looking for on what you're calling the legend?

9 MR. DAVIS: Sure. We'd asked --

10 JUDGE VANASKIE: I am picturing --

11 MR. DAVIS: Yes, Your Honor. We had asked for this
12 legend in December identifying who the counsel are, whether
13 they're in-house counsel and their roles at the company, and
14 what we got this morning only lists names and email addresses
15 for about half the people on the list; and then it's just a
16 name for the other half of people, it's literally just a name.
17 So we have no idea who they are, whether they're -- you know,
18 perhaps they're outside counsel, I don't know because all I
19 have is literally just a name.

20 So I think what I would be asking for is for Mylan,
21 for the in-house people where they've identified internal email
22 addresses, to say whether they are part of Mylan's legal
23 department or whether they are part of a different part of the
24 company, whether they're like, for example, in quality control
25 or regulatory, because it's much more likely, in my opinion, at

1 least, that if, you know, an email relates to, for example,
2 what Mylan has described on a number of their privilege log
3 entries as a privileged communication relating to, quote,
4 quality control testing, which I have, you know, a lot of
5 concerns about whether those kinds of documents can be
6 privileged, I'm not sure what lawyers have to say about
7 testing, for example, whether, you know, if that -- if that
8 lawyer on that chain is part of the quality control department
9 as opposed to the actual legal department within the company,
10 then, in my view, that makes it a lot more susceptible to
11 challenge because that in-house attorney is much more likely to
12 be acting not as an attorney on that communication.

13 As for the people that there are just names on, we
14 need more information to even understand who these people are.

15 JUDGE VANASKIE: So, John, are you looking for where
16 they are in the organizational chart in terms of what
17 department they're placed in, are they just legal department?
18 I mean, if you get something that comes back and says legal
19 department, is that sufficient or do you need more? I'm trying
20 to understand exactly what you're looking for.

21 MR. DAVIS: Sure, yes. I think that that would --
22 that would actually work, you know, for the in-house people,
23 you know, if they reside in the corporate structure in the
24 legal department, to say that; if they reside in, you know, I
25 threw out the example of quality, the QC department, quality

1 control, to say that; and for people who we just have names
2 for, at minimum, to provide email addresses for them or if
3 it's -- I'm assuming that probably a lot of those people are
4 outside counsel, what firm they are at.

5 JUDGE VANASKIE: Yes. Clem, what -- why can't that
6 information be produced? Maybe you haven't had a chance to
7 confer on this but it's basic information, it doesn't seem like
8 it would be burdensome to produce.

9 MR. TRISCHLER: Well, there's a lot of things that can
10 be produced. I guess what I would say, Judge, is there's a lot
11 of things that can be produced that don't necessarily have to
12 be produced or should they be produced. This is just an
13 example of, you know, my complaint and problem with the process
14 because we don't have a meaningful meet and confer.

15 When we talked on this issue on Sunday, January 24,
16 when we talked about the legend, what we talked about providing
17 was names and email addresses and that's what we provide, and
18 then today we hear now we don't want just names and email
19 addresses, we need to know what department they are in, what
20 role they provide, and for the hundreds of names that are on
21 there, basically doing an interrogatory, what to ask and you
22 need to tell us what each person does within the organization.
23 I don't think that's appropriate nor necessary for that level
24 of detail for a privilege log.

25 Obviously, if the Court asks me to and instructs me to

1 indicate whether the person is or is not employed within the
2 legal department, I'm going to do it; but I don't think that
3 level of detail is necessary or required.

4 JUDGE VANASKIE: Well, I --

5 MR. SLATER: Your Honor, it's Adam -- I apologize,
6 Judge.

7 JUDGE VANASKIE: Go ahead.

8 MR. SLATER: Your Honor, it's Adam Slater.

9 I've tried to stay out of this -- I've tried to stay
10 out of this but I thought maybe just it could be helpful sort
11 of from the outside looking in, because these discussions are
12 going on at different levels with the various defendants and
13 some of them, you know, cooperative and some, you know,
14 obviously, this issue is here.

15 In past litigations, I have found, and, in fact, in
16 *Benicar* we did this, we got what we called a cast of characters
17 from each defendant with regard to the people on the privilege
18 log, giving their position, their title and their department;
19 that way when someone looked at the list of names on the log,
20 you could look at the cast of characters, you'd know who they
21 are, where they fit into the organization. It certainly
22 doesn't take much work to do that because they're all listed
23 already.

24 I would just suggest that across the board that would
25 be very helpful because we're going to be in a process of

1 privilege challenges that's going to need to be a meet and
2 confer process to try to not overburden Your Honor as the
3 depositions come forward because we're going to be looking to
4 get loads of privileged documents as depositions approach,
5 because it's in both sides' interests not to have these
6 privilege challenges extend past the person's deposition, and
7 then have an important document come out and then have to fall
8 within Judge Schneider's order that said if that happens, you
9 redepose. We prefer to avoid that, too. So if everybody could
10 provide that, I think across the board, that would be very
11 helpful to us.

12 MR. TRISCHLER: Your Honor, this is Clem Trischler.

13 JUDGE VANASKIE: Yes.

14 MR. TRISCHLER: Sure. Thank you. I apologize for
15 cutting you off, Your Honor.

16 This is my -- I believe what Mr. Slater just proposed
17 and what the plaintiffs have now asked of Mylan for the first
18 time is overly burdensome. We've talked about the fact that
19 the discovery in this case across multiple manufacturers has
20 been extremely, extremely broad. It involved review -- it
21 required reviews of millions of -- literally millions and
22 millions of documents. Out of those, we have identified, on
23 behalf of Mylan, I think a little more than 2,000 documents for
24 which we claim privilege. And now what the plaintiffs are
25 asking is that we go through those 2,000 entries and we provide

1 name, rank, serial number information for every recipient and
2 every author of a document that's on that 2,200-item log, and
3 that every manufacturer in the case do the exact same thing. I
4 submit, Your Honor, that that's extremely burdensome,
5 particularly in the context where we're trying to get ready for
6 depositions, where the plaintiffs complain that they haven't
7 gotten documents soon enough, that they can't even get through
8 the documents that they have, and now we're going to have to
9 take -- it's not simple and it's not easy to produce all that
10 information that the plaintiffs are now asking for and, as I
11 said, every time -- and weren't asking for as recently as
12 Sunday.

13 JUDGE VANASKIE: Adam, what was the cast-of-character
14 information that was produced in the *Benicar* litigation?

15 MR. SLATER: The person's position, their title and
16 their department, which is obviously needed in order to
17 evaluate the claim of privilege across any documents to know
18 who were the recipients because that's obviously the
19 fundamental -- one of the fundamental questions.

20 JUDGE VANASKIE: All right. You know, I think that
21 that should be provided. I do believe that information should
22 be provided. It doesn't seem to me to be overly burdensome to
23 do. I know some of you do but --

24 THE COURT REPORTER: Excuse me, Your Honor. You're
25 breaking up.

1 JUDGE VANASKIE: That's basic information that should
2 be produced to enable a party to determine whether there's a
3 basis for challenging the assertion of privilege.

4 So I would require across the board that when there's
5 a privilege log, that information be provided, call it a
6 legend, that identifies those who were participants in the
7 communication and the department they work in and the title.

8 MR. GOLDBERG: Your Honor?

9 JUDGE VANASKIE: Yes.

10 MR. GOLDBERG: Your Honor, I'm sorry to interrupt.
11 This is Seth Goldberg. I do think Your Honor is missing a
12 piece of history, which is that this issue was explicitly
13 addressed when we negotiated the ESI protocol.

14 JUDGE VANASKIE: Okay.

15 MR. GOLDBERG: And it wasn't included, this request.
16 And I'll certainly invite my Duane, Morris colleagues who would
17 like to speak up on this issue to do so, but the parties have
18 been preparing logs now based on an ESI protocol that was
19 issued in 2019, and to now re-litigate the issue is really
20 going to result in an unfair burden on defendants to redo work
21 that they've been doing based on the current ESI protocol
22 that's been in existence for more than a year.

23 JUDGE VANASKIE: Okay. Thank you for that.

24 What if we were to limit it, in this instance I'm just
25 dealing with the Mylan documents. I think there are about 370

1 documents that are in question. Is that accurate, John?

2 MR. DAVIS: Well, it's -- that's our first, you know,
3 set that we're meet and conferring on. As I mentioned, Your
4 Honor, we have issues that are systemic with Mylan's privilege
5 log as well. The descriptive entries are really cut and paste
6 over and over again; but we're -- and that's an issue we've
7 raised with Mylan and we're continuing to meet and confer
8 about.

9 The issue with the -- with the legend and, you know,
10 the cast of characters, so to speak, is that, you know, it's
11 not just an issue for those 370 documents; this is an issue
12 across the board. The defendants chose to withhold on
13 privilege ground so many documents. I mean, Mylan alone has
14 2,200 documents on their latest privilege log given to us about
15 a week and a half or two weeks ago, and, you know, it's their
16 burden to demonstrate privilege. And I think that it's
17 entirely appropriate for us to -- you know, they've made this
18 work for themselves by designating all these documents as
19 privileged and having hundreds and hundreds of names on their
20 list. And, you know, we can't evaluate adequately for either
21 the 400 documents or 370 or whatever or for the 2,200 documents
22 on Mylan's entire list whether they're privileged without
23 understanding who is on those communications that provides the
24 basis for privilege. And I'm sure that's an issue for the
25 other defendants as well.

1 JUDGE VANASKIE: Did the ESI protocol require that
2 type of information be produced when asserting the privilege?

3 MR. SLATER: Your Honor, it's Adam Slater.

4 That was not addressed one way or the other. The ESI
5 protocol basically just said a privilege log will be provided
6 and the understanding was that it would be an appropriate
7 privilege log. We never litigated the contents of it. We
8 assumed, as plaintiffs, that the defense would comply with the
9 federal rules and I believe that was Judge Schneider's
10 expectation, that we would get a fulsome description of who the
11 people are that are on the document, who received it, either
12 directly or by cc, and a fulsome discussion of the content of
13 the document so that a meaningful evaluation could be made for
14 purposes of a privilege challenge. So it was not addressed in
15 any specificity as Mr. Goldberg suggested. It was left just do
16 a proper privilege log.

17 MR. PAREKH: Your Honor, this is Behram Parekh. I was
18 the one who negotiated the ESI protocol with defendants at the
19 time and I think what Mr. Goldberg is doing is confusing two
20 things. The ESI privilege log -- the protocol for the ESI
21 privilege log provides -- it says they need to provide a log in
22 compliance with federal law. It also says in addition to
23 whatever is needed, there needs to be an X for the specific
24 metadata fields that are listed in the ESI protocol providing
25 additional information about documents that are being withheld.

1 That list of metadata fields does not obviate defendants'
2 obligation to provide a privilege log that complies with the
3 federal rules. That is just additional information that they
4 are required to produce for electronically stored information.
5 And to say that because there's that list of additional
6 metadata that that is all they are required to produce does not
7 comply with the actual language in the privilege log, which is
8 Page 16, Subparagraph 5(A), of the ESI protocol which is Docket
9 entry 127.

10 JUDGE VANASKIE: Okay. So, John, what you're
11 essentially saying is that, at least as to Mylan, you think the
12 privilege log is inadequate.

13 MR. DAVIS: Yes, Your Honor. I mean, as Behram -- Mr.
14 Parekh was saying, you know, the fact that they've had to
15 produce metadata such as, you know, From, To, CC fields and
16 custodian fields, those obviously don't say who's a lawyer and
17 who's not a lawyer, and what their role is with the company.
18 That's the basis for privilege is, for attorney-client
19 communication privilege, at least, is that there's a lawyer on
20 it and that lawyer is providing legal advice or legal advice is
21 being sought from them; and if you don't even know who the
22 lawyers are or whether they're acting as in-house employees or
23 in-house lawyers, there's no way to really evaluate the claim
24 of privilege, which, again, I emphasize, Your Honor, is their
25 burden to establish.

1 JUDGE VANASKIE: Right.

2 MR. TRISCHLER: Your Honor, this is Clem Trischler.

3 JUDGE VANASKIE: Yes.

4 MR. TRISCHLER: I'll just close by saying just simply
5 because the plaintiffs say it's so doesn't make it so. When
6 they sit here and say Mylan's privilege log is inadequate under
7 the federal rules, I disagree. We have provided information
8 regarding the names of the recipients of the documents, the
9 names of the authors of the documents and a description of the
10 documents with sufficient clarity and detail that we believe
11 anyone can make a fair determination as to whether it's
12 privileged. They disagree, obviously, but that doesn't make it
13 so.

14 JUDGE VANASKIE: Right.

15 MR. TRISCHLER: And there's a process that's supposed
16 to be followed that was agreed upon months ago, over a year
17 ago, and when it's convenient to the plaintiffs, they want to
18 ignore it and simply come in and ask the Court to enter an
19 order without the log ever being reviewed, without the
20 supplemental information ever being considered, and asking this
21 Court to impose a duty on Mylan that hasn't been imposed on any
22 other party to this litigation, and then unilaterally changing
23 protocols to say, well, yeah, that's right, it wouldn't be fair
24 to impose it on Mylan so let's just now impose it on all the
25 defendants. That's not fair and that's not productive and

1 that's not going to get us to the point of trying to move this
2 case forward to the deposition process, which is what we're
3 supposed to be on the eve of.

4 What I've heard during this conference today is, you
5 know, plaintiffs need more time to review documents, they want
6 privilege logs rewritten that is going -- that if we provided
7 the name, rank and serial number information for every person
8 on the log that they've requested, it's going to take a month
9 to do that, Judge. And -- and, you know, I submit the
10 plaintiffs can't have their cake and eat it too. If they want
11 that, then, again, I'll say the same thing I said before, then
12 the deposition process needs to be adjourned. We need to spend
13 time to get the document production issue in order before we
14 move on to something else or else all we're going to be doing
15 is -- is creating more issues down the road because you can see
16 where this is headed. We're going to be forced into
17 depositions in the next 30 to 45 days and the plaintiffs are
18 going to say in every case, we didn't have time to get through
19 these documents, even though they were produced in time and in
20 compliance with the Court's order, and so we want to depose all
21 these witnesses again. I haven't gotten -- we didn't get
22 through any of the privileged documents and we've got to go
23 through all that, and we're just going -- it's going to be
24 endless litigation over document production issues and requests
25 to redo depositions, and I don't think it can go -- I don't

1 think that is the most efficient process for this litigation.

2 So either we're going to continue to battle on these
3 document production issues, and then if that's the case, let's
4 do it, let's get it resolved in the next 60 days. There's no
5 trials happening in 2021 in the District of New Jersey or
6 probably anywhere in the United States. So let's adjourn the
7 depositions, let's get these issues resolved that the
8 plaintiffs say are real issues. Let's give this Court a chance
9 to really look at them. But, you know, to just go full-speed
10 ahead with depositions and then let them clutter the record
11 with document production claims just to lay a foundation so
12 that they can come back later and say we told you, Judge, now
13 let me take all these witnesses a second time, that's not fair,
14 it's not appropriate. And I realize I'm getting off the log
15 issue but it's all related, Your Honor.

16 JUDGE VANASKIE: Yes.

17 MR. TRISCHLER: And it's why I don't think it's ripe
18 to be moving into the depositions if the plaintiffs are going
19 to continue to raise all these issues with respect to privilege
20 logs and for timing and production.

21 JUDGE VANASKIE: Well, I don't have an adequate basis
22 right now for me to make a determination as to adequacy of
23 privilege logs, I haven't even seen one, and whether it has the
24 requisite information in it. I'll look at the ESI protocol in
25 terms of what it provides with respect to how you present

1 challenges to privilege assertions, if it does or if it
2 doesn't. If it doesn't, then the plaintiffs are free to
3 challenge the adequacy of the privilege log or whether
4 particular documents have not been described with sufficient
5 particularity to warrant attorney-client privilege protection
6 or work-product protection.

7 So I really, you know -- John, you were looking for
8 guidance. I can't give you guidance in a vacuum like this. I
9 can say, though, that if the logs prove to be inadequate,
10 there's a remedy for that; and that remedy can be either the
11 privilege is waived or you've got to go back and redo your log.
12 But it has to be presented to me in an appropriate way and
13 that's probably by way of a motion. It's not presented to me
14 in the appropriate way at this time for me to make that
15 determination. And I don't have a sense, as I said, I haven't
16 even looked at what has been compiled as a privilege log, to
17 make an initial -- an initial determination on that. So that's
18 about -- I'm sorry I can't give you guidance, I'd love to give
19 you guidance, but I encourage you to meet and confer on this
20 issue and see what you can resolve; but if you can't resolve
21 anything, then you're going to have to file the appropriate
22 motion.

23 And we're not going to defer depositions; they're
24 going to move forward. And if the consequence of an
25 over-zealous identification of a document's claim to be

1 privileged proves to be the case, it was over-zealous and
2 documents should not have been withheld, well, that's the
3 consequence. The consequence may have to be redeposition but
4 that's the consequence of not having properly asserted the
5 privilege. And so we're just going to move forward from here
6 along those lines.

7 Anything else in terms of the agenda for our
8 discussion before we try Judge Kugler?

9 (No response.)

10 JUDGE VANASKIE: All right. Not hearing anything, I'm
11 going to put you on hold for a second and see if I can add
12 Judge Kugler to this call. Hold on.

13 (Brief recess taken at 12:00 p.m.)

14 JUDGE VANASKIE: Counsel, what I'm going to do is drop
15 off the call for now, get Judge Kugler on and then rejoin. I
16 think that's the only way I can do this. So I'll be back to
17 you in a couple of minutes. Thank you.

18 (Brief recess taken at 12:01 p.m.)

19 JUDGE VANASKIE: Hi. Tom Vanaskie. Good afternoon,
20 Judge Kugler.

21 JUDGE KUGLER: Hello. Good afternoon, everybody. I
22 hope everyone's well.

23 MR. SLATER: Hello, Judge.

24 MS. GOLDENBERG: Good afternoon.

25 (All respond good afternoon.)

1 JUDGE KUGLER: Is Karen Friedlander on the line?

2 THE COURT REPORTER: No, Judge. Camille Pedano is on
3 the line.

4 JUDGE KUGLER: Hello. How are you?

5 THE COURT REPORTER: I'm very well, Judge. Thank you.
6 And yourself?

7 JUDGE KUGLER: I'm fine.

8 Are they speaking clearly enough today?

9 THE COURT REPORTER: Yes, they are, Judge. Thank you
10 very much.

11 JUDGE KUGLER: Let's not hesitate to tell them when
12 they aren't, okay?

13 THE COURT REPORTER: Thank you.

14 JUDGE KUGLER: All right. A couple of housekeeping
15 items first.

16 I expect to file today or tomorrow Opinion Number 4
17 and Order Number 4 on the defendants' motions to dismiss.
18 Pretty much a repeat of the earlier ones, there's some issues
19 for the plaintiffs, but mostly their claims will survive these
20 motions.

21 Another thing I want to talk to you about is I want to
22 remind the defense counsel when you submit briefs and letters,
23 please double-space them. It makes it a heck of a lot easier
24 to get through them when you do that. And also, could you
25 please, when you send in the letters before these conferences,

1 put at the end the things -- the dismissals and things like
2 that that you need me to do. It's just easier to keep track of
3 an agenda when we do it that way.

4 Okay. Let's talk about, I think in defense counsel's
5 letter of January 26, Ms. Cohen, you had a series of cases on
6 the list for failure to file sufficient Plaintiff Fact Sheets.
7 I apologize that we missed the previous orders of dismissal.
8 That's my fault, we didn't get them. But I understand there's
9 four of them, there's Louis Fisher, Dorothy Battle, Alcus
10 Gunter, G-U-N-T-E-R, and Theodore Keller.

11 I understand that counsel for Louis Fisher has
12 contacted us and is filing a motion to set aside that dismissal
13 claiming that he never got notice of the order to show cause,
14 et cetera, et cetera, but stating that they were going to
15 contact defense counsel, tell you what was going on. Has that
16 happened?

17 MS. COHEN: Good afternoon, Your Honor. This is Lori
18 Cohen with Greenberg, Traurig. Mr. Harkins from our team is
19 going to address this with you --

20 JUDGE KUGLER: Okay.

21 MS. COHEN: -- so I'll let him chime in. Thank you.

22 JUDGE KUGLER: Good. Thank you.

23 Mr. Harkins.

24 MR. HARKINS: Good afternoon, Your Honor. This is
25 Steve Harkins with Greenberg, Traurig for the Teva defendants

1 and the defense group.

2 We are unaware of Mr. Fisher or his counsel, better,
3 reaching out to the defense group on this issue. We could
4 raise this on our meet and confer with plaintiffs next week
5 when all counsel are invited to attend. We notified plaintiffs
6 that we would be addressing these four cases which remain
7 impertinently not dismissed after the November conference. I
8 am unaware, on behalf of the defendants, of any contact by Mr.
9 Fisher or his counsel to the defense group. So I apologize for
10 being unable to respond better but, you know, we're not aware
11 of any communication from him to us.

12 JUDGE KUGLER: Well, that's fine. Why don't we give
13 them a couple more days to see if they file a motion; if not,
14 we'll just do a dismissal order. Like I said, it's my fault
15 that we missed these four. The other three we'll do an order
16 today, the Battle, Gunter and Keller cases we'll do the order
17 of dismissal today. Okay?

18 MS. SMITH: Excuse me, Judge. This is Loretta.

19 Mr. Fisher's counsel has already filed a motion, and I
20 was going to respond to it today.

21 So, Mr. Harkins, are you the person on the defendants'
22 Executive Committee or counsel that responds or is responsible
23 for these lists? Because, otherwise, I'd like to email you
24 directly about this.

25 MR. HARKINS: Yes, you can reach out directly to me or

1 any of the rest of the Executive Committee members at
2 Greenberg, Traurig, Ms. Cohen or Ms. Lockard, and we'll be
3 happy to coordinate that.

4 MS. SMITH: Thanks.

5 JUDGE KUGLER: Okay. Thank you.

6 MS. GOLDENBERG: Your Honor, this is Marlene
7 Goldenberg for the plaintiffs. I did just want to note that I
8 am responsible for coordinating these meet-and-confer calls on
9 the plaintiffs' side. I was unaware that Mr. Fisher's counsel
10 had an issue with the dismissal and so, candidly, I did not
11 email him or let him know that there was going to be an issue
12 today because I didn't realize there was one. So I appreciate
13 the Court granting them a few additional days to deal with
14 this, and I will make sure to reach out to his counsel and --
15 the client's counsel and let them know that this is something
16 they need to deal with right away.

17 JUDGE KUGLER: Well, maybe you can get the plaintiff's
18 counsel together with Mr. Harkins or somebody else on behalf of
19 the defense and they can talk and figure out what needs to be
20 done, if anything. Okay?

21 MS. GOLDENBERG: I will be happy to facilitate that.

22 JUDGE KUGLER: Thank you.

23 All right. There's a number of other show-cause
24 orders that were returnable today. According to Ms. Cohen's
25 letter, Mr. Harkins, Smoot, S-M-O-O-T, Aikens, A-I-K-E-N-S, and

1 Napolitano matters can be withdrawn, correct?

2 MR. HARKINS: Yes, Your Honor, that's correct.

3 JUDGE KUGLER: And you have also resolved the Schiano,
4 S-C-H-I-A-N-O, and Ware, W-A-R-E, matters, so those orders to
5 show cause can be dismissed, correct?

6 MR. HARKINS: Yes, Your Honor.

7 JUDGE KUGLER: And the Sharon Lomax case, L-O-M-A-X,
8 that has been dismissed so we can -- we can dismiss the order
9 to show cause on that one, correct?

10 MR. HARKINS: Yes, Your Honor.

11 JUDGE KUGLER: And that leaves four. We still have
12 four or have there been any developments since you filed this
13 letter yesterday?

14 MR. HARKINS: Your Honor, we do have one update. The
15 Troyce, T-R-O-Y-C-E, case, the parties are working to correct
16 so we can now remove our request to show cause with respect to
17 that case. We continue to request orders to show cause for
18 Hebert, Newcombe and Williams.

19 JUDGE KUGLER: All right. The Hebert matter, do
20 plaintiffs have anything they want to say about that?

21 MS. GOLDENBERG: Your Honor, this is Marlene
22 Goldenberg again.

23 MR. DUNN: Your Honor, this is --

24 MS. GOLDENBERG: Oh, I'm sorry. Go ahead.

25 MR. DUNN: -- Attorney Tom Dunn, I work for Damon

1 Baldone, and I think the name you're saying is Hebert. Is it
2 H-E-B-E-R-T?

3 JUDGE KUGLER: Yes, I'm sorry, I'm not from down
4 there. So it's Hebert.

5 MR. DUNN: Yeah, I know. It's pronounced Hebert.

6 Your Honor, we have filed an amended Plaintiffs' Fact
7 Sheet on December the 29th and I think that we brought
8 everything up to date on that fact sheet. I was given a list
9 of deficiencies and I went through every page and tried to
10 resolve every question the defense -- the defendants had on it.

11 JUDGE KUGLER: Well, did -- Mr. Harkins, did you get
12 that?

13 MR. HARKINS: Your Honor, we did receive the PFS that
14 was filed on December 29th. By our review, we are still
15 missing records and authorizations that are necessary for the
16 PFS to be substantially complete. We included the case as
17 still having outstanding deficiencies on our meet-and-confer
18 list which was sent to plaintiffs for the January meet and
19 confer, and then we were attempting to be available to discuss
20 that case, to the extent necessary, on our meet-and-confer call
21 last week.

22 I spoke with counsel for the defense who's been taking
23 lead on this case and as far as we are aware, this is the first
24 time that anything with respect to this plaintiff has been
25 presented to defendants. We've not had any EL communications,

1 we've not been contacted with respect to the ongoing
2 deficiencies. I appreciate -- and, you know, again, we're
3 happy to continue to work with defendants -- or, I'm sorry,
4 plaintiffs to the extent possible to cure these deficiencies,
5 but this case has been listed on numerous agendas leading up to
6 this and this is the first that we're being provided anything
7 other than the still being substantially incomplete PFS records
8 and, again, lacking authorizations.

9 JUDGE KUGLER: Well, I am going to go ahead and grant
10 the Motion to Dismiss in this matter. Plaintiff's counsel can
11 always move quickly to set that aside when you think you've
12 completed the PFS.

13 MR. DUNN: Your Honor, we've admitted a PFS five times
14 since September and in August, two times in December, and just
15 this morning there was only one correction made, that was the
16 spelling of a city that was on the PFS.

17 I contacted Nathan Reeder on January the 22nd when he
18 told me he was putting this on the docket for today, and I told
19 him that I've attempted to answer every entry on the PFS. If
20 he would let me know exactly what he considered a deficiency,
21 I'll cure that deficiency. I don't see anything that we can
22 answer on there, anything that's not been answered.

23 JUDGE KUGLER: Well, apparently, you have --

24 MR. DUNN: That he -- that --

25 JUDGE KUGLER: Go ahead.

1 MR. DUNN: Go ahead, Judge.

2 JUDGE KUGLER: No. Go ahead.

3 MR. DUNN: I was going to tell you that that email --
4 that email went out on January 22nd asking for any deficiencies
5 that they can tell me about. I didn't get a reply back.

6 MR. HARKINS: Your Honor, this is Steve Harkins on
7 behalf of the defendants.

8 I would ask that we reserve entering an order on this
9 case at least so that we can communicate and confirm if that,
10 in fact, happened. To the extent that counsel reached out to
11 ask about curing these deficiencies, we're happy to postpone
12 this for a month; and if it is a case that would be appropriate
13 for including in the set of orders to be entered today, we can
14 certainly communicate that with the Court. Again, if
15 plaintiffs' counsel -- and, again, I'm personally unaware of
16 this, but if that, in fact, happened, we can certainly defer
17 this case for another month.

18 JUDGE KUGLER: All right. We'll put this on the
19 February order to show cause list for the time being and maybe
20 you can work this out. Okay?

21 MR. DUNN: All right, Judge.

22 MR. HARKINS: Thank you, Your Honor.

23 JUDGE KUGLER: All right. That takes us to Newcombe,
24 N-E-W-C-O-M-B-E, any plaintiff want to talk about that?

25 MR. NIGH: Your Honor, this is Daniel Nigh for the

1 plaintiffs.

2 I don't have anything to add here. I think it's, you
3 know, it's been listed multiple times and it's subject for
4 dismissal.

5 The only housekeeping item I did want to say is that
6 this same case is listed further below, it looks like it's Page
7 10 of the agenda, and it's listed as a first listing case. I
8 think it just needs to be removed from there on the agenda. It
9 has been listed multiple times and plaintiff just failed to
10 give us any response on this PFS. So we don't have anything
11 further to say.

12 JUDGE KUGLER: I see that it's listed again. How
13 about that. And it's the same docket number. I've had cases
14 in the past where people file multiple lawsuits with multiple
15 lawyers, but this is apparently not that case.

16 Anyway, we'll grant the Motion to Dismiss the Newcombe
17 matter, and it's Number 4 on the first listing on Page 9, so
18 we'll take it off of that first listing. So that's granted.
19 That will be dismissed.

20 Naomi Williams, any plaintiff counsel want to speak
21 about that?

22 MR. NIGH: Your Honor, this is Daniel Nigh. I
23 represent this client as well, and this client doesn't wish to
24 proceed further. So I think this one's subject for dismissal
25 as well.

1 JUDGE KUGLER: That will be dismissed. Okay.

2 Then the next series of cases, we have four that the
3 defendants are seeking to add to the order to show cause list
4 in February. Defendants have any changes on any of these?

5 MR. HARKINS: No, Your Honor. No updates on these
6 cases. We are --

7 THE COURT REPORTER: Excuse me. I'm sorry, who's
8 speaking? I'm sorry, you're going to have to repeat that,
9 there was too much interference. Go ahead.

10 MR. HARKINS: Sorry. It sounded like there was
11 someone else on.

12 This is Steve Harkins with Greenberg, Traurig for the
13 Teva defendants and the defense group.

14 We are still requesting orders to show cause
15 returnable in February for all four of these cases.

16 JUDGE KUGLER: Any objection from the plaintiffs?

17 (No response.)

18 JUDGE KUGLER: All right, these four, Delgato
19 Riffenburg D-E-L-G-A-T-O R-I-F-F-E-N-B-U-R-G, Babin,
20 B-A-B-I-N, Hill, H-I-L-L, and Trowbridge, T-R-O-W-B-R-I-D-G-E,
21 will be listed on the February order to show cause list.

22 Next group are first listing cases. There are nine of
23 those. Any of those need to be removed at this point, Mr.
24 Harkins?

25 MR. HARKINS: No updates, Your Honor. Though we will

1 make sure to remove the duplicate case, I believe that was just
2 an oversight on our part, going forward.

3 JUDGE KUGLER: All right. Any objection from any
4 plaintiffs as to putting this on a second listing, any of these
5 cases?

6 (No response.)

7 JUDGE KUGLER: All right. Patterson,
8 P-A-T-T-E-R-S-O-N, Hodan, H-O-D-A-N, Gibson, Martinez, Stewart,
9 S-T-E-W-A-R-T, Betz, B-E-T-Z, Medrano, M-E-D-R-A-N-O, Hudson
10 and Keller will go to a second listing.

11 All right. That leaves the first listing, failure to
12 file the Plaintiffs' Fact Statement. There are six listed but
13 we are going to remove the Newcombe one, so there are five
14 left. Any updates on those?

15 MR. HARKINS: No updates, Your Honor.

16 JUDGE KUGLER: Any objection from the plaintiffs to
17 moving this to a second listing?

18 (No response.)

19 JUDGE KUGLER: All right. Motl, M-O-T-L, Greenleaf,
20 Jackson, Thompson, and Futch, F-U-T-C-H, will all be listed
21 next month for a second listing if not resolved by that time.

22 All right. Now, I'm not sure that any more of these
23 issues that are raised in your letters from yesterday need to
24 be resolved by me. Is there any other issues you want me to
25 address at this time, any side? We'll start with plaintiffs.

1 MR. SLATER: Hello, Your Honor, Adam Slater. I don't
2 think we have any other issues for you today, Your Honor.

3 JUDGE KUGLER: How about defense counsel?

4 MS. LOCKARD: Hi, Your Honor, Victoria Lockard.

5 I just want to address one issue that plaintiffs'
6 counsel and me have been working on with respect to the
7 bellwether plaintiffs. And Mr. Daniel Nigh I think is leading
8 this for plaintiffs. I don't know if he anticipates to speak
9 up on this. But what has occurred, pursuant to Your Honor's
10 instructions to meet and confer over the bellwether pool
11 process, is that parties have met and conferred, we have agreed
12 to that process and we have actually both exchanged bellwether
13 plaintiff picks for the personal injury actions which resulted
14 in a potential trial pool of 28 plaintiffs.

15 So Mr. Nigh and I are working on meet-and-confer
16 conferences to hammer out some of the details with respect to
17 that process and we anticipate submitting an order to Your
18 Honor very soon on those issues that would memorialize the 28
19 picks that were agreed upon and -- and what that means for the
20 case.

21 We also intend, pursuant to the Court's prior
22 scheduling order, I think we're obligated to take ten of the
23 bellwether plaintiffs' depositions by April 1st, and so we're
24 in position to do that, so we will proceed with those
25 depositions in March.

1 And I'll ask Mr. Nigh if he has anything further to
2 add to that?

3 MR. NIGH: No, I think that's a good update. This is
4 Daniel Nigh for the plaintiffs. I think that's a good update.
5 I don't have anything else to add, except for I will say that
6 we were able to work together pursuant to Your Honor's request
7 at the end of November, and we were able to work together on a
8 process that we would be able to pick -- or make picks on
9 behalf of plaintiffs and make picks on behalf of defendants and
10 now we have our pool of 28 cases, and we also should be in a
11 position to proceed forward on the first ten bellwether
12 plaintiffs' depositions in March, and we're working on that
13 issue as well. That's all.

14 JUDGE KUGLER: All right. I also note in Ms. Cohen's
15 letter the state court coordination order, and I've read
16 through it. What do you intend to do with that? How are you
17 going to proceed with that?

18 MR. GOLDBERG: Your Honor, this is Seth Goldberg on
19 behalf of the defendants.

20 At this point, we have raised the issue, we'd like to
21 meet and confer with plaintiffs about it. And we discussed
22 with Judge Vanaskie that really there's not an issue for the
23 Court to resolve today on this; but the intention is to have
24 this Court enter the joint coordination order which would
25 prioritize discovery in the MDL over discovery in any state

1 court actions that might proceed to that point. And the way it
2 would work would be that a judge in a state court action would
3 enter -- would enter the order as well, if that judge deemed it
4 appropriate. But we can come back to Your Honor in February
5 once we've met with plaintiffs on this issue.

6 JUDGE KUGLER: Okay. That's fine. We'll see -- we'll
7 see the kind of reception you get in the state court on this.
8 I mean, I'm receptive to it, obviously. There's no reason you
9 should be duplicating discovery efforts between here and
10 various state courts around the country. So we'll go from
11 there.

12 All right. Anything else defense counsel would like
13 to discuss today?

14 MR. GOLDBERG: I don't believe so, Your Honor.

15 JUDGE KUGLER: Well, thank you very much, everybody.
16 Stay safe, stay well, and we will talk to you in February.

17 (The proceedings concluded at 12:24 p.m.)

18 - - - - -

19 I certify that the foregoing is a correct transcript
20 from the record of proceedings in the above-entitled matter.

21

22 /S/ Camille Pedano, RMR, CRR, CCR, CRC, RPR
23 Court Reporter/Transcriber

24 01/28/2021
25 Date

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